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Wednesday
June 6, 1984

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Environmental Protection Agency

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Environmental Protection Agency

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Food and Drug Administration

Aviation Safety
Federal Aviation Administration

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Regulations for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends § 54.27 of the regulations governing the grading and certification of meats, prepared meats, and meat products by increasing the fees for voluntary Federal meat grading and certification services to reflect increased program operating costs.

EFFECTIVE DATE: July 6, 1984.

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin, Chief; Meat Grading and Certification Branch; Livestock Division; Agricultural Marketing Service, USDA; Room 2638–S, 14th Street and Independence Avenue, SW., Washington, D.C. 20250 (Telephone 202/382–1246).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to section 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*). William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule raises fees to cover increased costs of providing voluntary Federal meat grading and certification services. However, on a nationwide basis, the new fee will not measurably affect the average cost per unit graded and/or certified currently borne by all entities using the services. Consequently, these fees will not significantly affect a substantial number of meatpackers, meat processors, or consumers, and will not affect normal competition in the marketplace.

Background Information

The Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meats and meat products and to enable consumers to obtain the quality of meat which they desire. The AMA also authorizes the collection of fees from users of Federal meat grading and certification services which are approximately equal to the costs of providing services. The hourly fees for service are based on (1) projected annual program operating costs, and (2) the estimated hours of service—revenue hours—provided to users of the service. Program operating costs include salaries and fringe benefits of meat graders, supervision, travel, training, and all administrative costs of operating the program. Revenue hours include base hours—service performed between 6 a.m. and 6 p.m., Monday through Friday; overtime hours—service performed before 6 a.m. or after 6 p.m., Monday through Friday, and anytime on Saturday or Sunday; and holiday hours—service performed on Federal legal holidays. As program operating costs increase or the number of revenue hours decrease, the hourly fee rates must be adjusted so that the program remains financially self-supporting as required by law.

The Agency projects that the total revenue earned during FY 1984 will be less than the amount earned during FY 1983 because of a reduction in the number of hours meat grading and certification services are utilized by meat packers and processors. The projected decline in revenue hours, including overtime hours, primarily is a result of meat industry automation, reduced operations of smaller less efficient plants, and the Agency's increased use of statistical sampling in meat certification operations. Despite the projected reduction in revenue hours, the Agency anticipated that the overall demand for grading and certification services will remain unchanged. Consequently, the number of graders required to provide service to all locations where it is requested, at the times requested, and to provide relief for annual leave and essential developmental training in FY 1984 will not be substantially different than that in FY 1983.

To offset the projected reduction in revenue, the Agency was able to reduce operating expenses in such areas as: (1) contractual services for training, (2) employee travel and subsistence costs, and (3) administrative costs through field office closings. These actions enable the Agency to reduce total program operating expenses. However, these cost savings were more than offset by the increase in Federal employee salary and fringe benefits mandated by Congress. The 3.5 percent salary and fringe benefit increase cited in the interim final rule published in the February 21, 1984, issue of the **Federal Register** (49 FR 6315) was subsequently increased to 4.0 percent. Pub. L. 98–270, Omnibus Reconciliation Act 1983, adjusted the original salary and fringe benefit increase by 0.5 percent retroactive to January 8, 1984. Because employee salary and fringe benefits comprise approximately 80 percent of the total Meat Grading and Certification Branch annual operating expenses, total program operating costs were increased. The Agency is unable to effect further nonsalary cost reductions to offset the full 4-percent pay increase without adversely affecting the program's ability to provide timely and uniform grading and certification services. Therefore, a $0.60 per hour increase in the hourly fee rates for meat grading and certification services is necessary. Even though meat packers and processors will pay $0.60 more per hour for service, the meat industry as a whole will be using less total hours of service on a nationwide basis, although the total volume of meats graded and/or certified will remain about the same.

Comments

On February 21, 1984, the Agricultural Marketing Service published in the **Federal Register** (49 FR 6315) an interim

final rule increasing the fees for Federal meat grading and certification services, effective March 1, 1984. This rule was published on an interim basis with request for comments as a means of providing full public participation in the rulemaking process. Additionally, this rule was implemented on an interim basis without a prior proposal because increased revenues were needed immediately to cover the increased costs of providing service. Comments on this amendment were requested by March 31, 1984. During the 30-day comment period, the Agency received three letters in response to the interim final rule. Two comments were received from two meat associations and one from a meat packing and processing firm.

Discussion of Comments

Each comment reflected dissatisfaction with the fee increase and expressed the view that any increase during the current economic plight of the meat industry was excessive and not justifiable. The comments contained general observations on increasing the fee rates and suggested that USDA take action to reduce program operating expenses in lieu of increasing the fees.

During the past several years, the Agency has reduced both the direct and indirect costs of providing meat grading and certification services to help offset increasing costs. Through the development and implementation of statistical sampling in certification operations, the Agency has reduced manpower requirements by approximately 14 percent, resulting in an estimated $2,000,000 reduction in the industry's cost of using meat grading and certification services. Overhead expenses also have been reduced. Since 1981, the Agency has reduced the number of main station field offices from 11 to 9 and closed 6 substation offices. These actions have resulted in a savings in managerial salaries, office rent, communications, utilities, and other administrative overhead costs. The Agency also saved approximately $430,000 in meat grader travel and training costs during the past 18 months. Other reductions in supervisory and Washington staff positions and Agency and Department support services also have contributed to lower operating costs. By implementing these reductions, the Agency has been successful in keeping meat grading and certification fee rate increases to a minimum and well below overall price increases nationwide. Further reductions at this time to offset the fee rate increase would adversely affect the program's ability to provide timely and uniform grading and certification services.

All commentors indicated that the Agency could implement further cost reductions in the areas of hiring and training new meat graders in lieu of increasing the fee rates. The commentors believed that the demand for meat grading and certification had declined as a result of plant closings, increased marketing of ungraded beef, and reduced consumer demand for beef. The commentors stated a belief that a surplus of meat graders currently exists. While it is true that fewer plants continue to operate, the nationwide tonnage of graded and certified meats has remained approximately the same over the last several years. Also, the demand for carcass grading services has not diminished significantly. Plants using grading services still request that meat graders review most or all fed beef carcasses and generally grade those qualifying for USDA Prime and Choice.

Program modifications during the past several years have reduced manpower requirements. Concurrently, there has been an unanticipated increase in the attrition of meat graders—retirements, resignations, etc.—which has reduced staffing levels below the level required to provide requested service without excessively long hours, canceling of meat grader annual leave, and reducing essential training. As a result, the program must hire and train additional meat graders during 1984 to meet the demand for grading and certification services.

One commentor suggested that a User Oversight Committee composed of industry representatives be established for the purpose of working with the Agency in determining operating and management practices and decisions. The commentor requested that the hourly fee rates not be increased until such a User Oversight Committee has evaluated and justified the fee increase. However, the program is required by law to assess fees equal to the costs of providing service. Since the program's operating costs already have increased, the fee rates also must be increased.

Another commentor expressed concern about the permanent duty locations of meat graders nationwide. The commentor suggested that program operating costs could be reduced by relocating some graders to reduce travel and per diem costs incurred in detailing graders to other areas of the country for temporary work assignments. Due to the current shortage of meat graders and the seasonal fluctuation in the locations of Federal Purchase certification work, it has been necessary to temporarily detail graders to other locations so that the program can continue providing requested services to all establishments. Relocating these graders would shift the program's understaffed locations from one area to another. Travel and per diem costs for temporary assignments would still continue, and the cost of permanently relocating meat graders would increase program operating costs. The Agency will be assigning newly hired meat graders to understaffed areas when they complete the next formal training program in August 1984. This will reduce the need to detail graders from other locations.

Two commentors also expressed the view that the cost per pound of meat for grading and certification is higher than stated in the interim final rule. While the Agency recognizes that this cost may vary among individual establishments, the nationwide annual cost of grading and certification services is calculated by dividing the projected revenue collected from users of the service by the estimated pounds of product graded and certified nationwide. For 1984, the nationwide cost per pound of graded and certified meat was calculated as follows:

$$\frac{\$18.9 \text{ million (total fees collected)}}{13.9 \text{ billion pounds (graded and certified product)}} = \$0.00136 \text{ per pound}$$

One commentor also was concerned that the increase in fee rates may render grading and certification economically unfeasible for users of the service. The Agency believes that the financial impact of the fee rate increase on the industry and the consumer will be minimal. As a whole, the industry will pay for less hours of service than during 1983. Consequently, the new fee rates will not adversely affect the cost per pound of meat graded and/or certified on a nationwide basis.

In view of the foregoing, it has been decided that the base hourly rate for voluntary Federal meat grading and certification services performed between the hours of 6 a.m., and 6 p.m., Monday through Friday, except on Federal legal holidays, should be increased from $25.00 to $25.60 per hour. For work performed on Saturday or Sunday and before 6 a.m. or after 6 p.m., Monday through Friday, except on Federal legal holidays, the hourly rate should be increased from $30.00 to $30.60 per hour. For all work performed on Federal legal holidays, the hourly rate should be increased from $50.00 to $51.20 per hour.

Pursuant to the authority in 5 U.S.C. 553, it is found that other public

procedure and notice with respect to these amendments are impracticable and unnecessary, and good cause is found for making these amendments effective as a final rule without changes.

Accordingly, the section of the regulations appearing in 7 CFR Part 54 relating to hourly fees for Federal grading and certification of meat, prepared meats, and meat products is amended as set forth below:

PART 54—MEAT, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 reads as follows:

Authority: Agricultural Marketing Act of 1946, sec. 203, 205, as amended; 60 stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

2. 7 CFR 54.27(a) is revised to read as follows:

§ 54.27 Fees and other charges for service.

* * * * *

(a) *Fees based on hourly rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including time required for the preparation of certificates and travel of the official grader in connection with the performance of service. A minimum charge for one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate shall be $25.60 per hour for work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $30.60 per hour for work performed before 6 a.m. or after 6 p.m., Monday through Friday, and anytime Saturday or Sunday, except on Federal legal holidays; and $51.20 per hour for all work performed on Federal legal holidays.

* * * * *

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, Pork.

Done at Washington, D.C., June 1, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-15191 Filed 6-5-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 953

Irish Potatoes Grown in the Southeastern States; Amendment No. 1 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment relaxes requirements on fresh market shipments of potatoes grown in designated countries of Virginia and North Carolina by exempting all potato varieties except round whites. This should enable the Southeastern potato industry to better compete with other potato producing areas in the U.S. by ensuring the use of potatoes acceptable to buyers.

EFFECTIVE DATE: June 5, 1984.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 475-3929.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act.

Information collection requirements contained in this regulation (7 CFR Part 953) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581-0084.

This final rule has been reviewed under Secretary's memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 104 and Order No. 953, both as amended, regulate the handling of potatoes grown in designated counties of Virginia and North Carolina. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Southeastern Potato Committee, established under the order, is responsible for its local administration.

Notice was published in the May 16, 1984, **Federal Register** (49 FR 20713) regarding the proposal. It afforded interested persons an opportunity to file written comments by May 29, 1984. No comments were received.

This regulation is based upon a recommendation made by the committee at its public meeting in Norfolk, Virginia, on April 19, 1984.

The committee recommended that all potato varieties except round whites be exempted from the grade, size and inspection requirements imposed under the order. This should provide flexibility for handlers of non-round white potatoes. Because such potatoes are grown in small quantities in the production area and shipped to markets on an experimental basis, requirements intended for round white potatoes would be inappropriate. Further, because growing and marketing of these potatoes from this production area are still experimental, shippers have not yet determined the size and quality standards that should be set. Until this becomes an established, significant operation the handling regulation will not apply to such shipments. This should enable the Southeastern potato industry to better compete with other potato producing areas in the U.S. by ensuring the use of potatoes acceptable to buyers.

Therefore, after consideration of all relevant matters it is found that the following handling regulation amendment will tend to effectuate the declared policy of the act by setting the minimum grade, size and inspection requirements which the Secretary has found should be maintained for orderly marketing.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area will begin on or about the effective date of June 5, 1984, (2) to maximize benefits to producers, the regulation should apply to as many shipments as possible during the marketing season, and (3) it relaxes the inspection requirements applicable to potatoes under the order, and thus, the effective date of June 5, 1984, will allow affected handlers adequate time to adjust to the provisions of the amended regulation.

Requirements contained in this handling regulation, effective June 5, 1984, will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary.

List of subjects in 7 CFR Part 953.

Marketing Agreements and Orders, potatoes, Virginia, North Carolina.

PART 953—[AMENDED]

Section 953.322 Handling regulation introductory text, paragraphs (a), (b), (c)

and the introductory text of (d) are revised as follows:

§ 953.322 Handling regulation.

During the period beginning June 5 and ending July 31 each season, no person shall ship any lot of potatoes produced in the production area unless such potatoes meet the requirements of paragraphs (a) and (b) of this section or unless such potatoes are handled in accordance with paragraphs (c) and (d) or (e) of this section.

(a) *Minimum grade and size requirements.* All round white varieties of potatoes shall be U.S. No. 2 or better grade, 1½ inches (38.1 mm) minimum diameter.

(b) *Inspection.* Except as provided in paragraphs (c) and (e), no handler shall ship any round white potatoes unless an appropriate inspection certificate covering them has been issued by the Federal-State Inspection Service and the certificate is valid at the time of shipment.

(c) *Special purpose shipments.* The grade, size, and inspection requirements set forth in paragraphs (a) and (b) of this section shall not apply to potatoes shipped for canning, freezing, "other processing" as hereinafter defined, livestock feed, charity or to shipments of round red, long white or Russet variety potatoes. However, the handler of any potatoes shipped for such special purposes shall comply with the safeguard requirements of paragraph (d) of this section.

(d) *Safeguards.* Each handler making shipments of potatoes for canning, freezing, "other processing," livestock feed or charity, or making shipments of round red, long white or Russet variety potatoes in accordance with paragraph (c) of this section shall:

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 31, 1984 to become effective June 5, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–15009 Filed 6–5–84; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1464

Tobacco Loan Program

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule without change the interim rule published in the **Federal Register** on January 20, 1984 (49 FR 2466). The rule eliminates a flue-cured tobacco program commonly referred to as the "4 leaf program."

DATE: Effective June 6, 1984.

ADDRESS: Copies of the Final Regulatory Impact Analysis may be obtained from the Director, Analysis Division, Room 3714 South Building, Fourteenth Street and Independence Avenue, S.W., P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 382–0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets.

Information collection requirements contained in this regulation (7 CFR Part 1464) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560–0076.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

An interim rule was published in the **Federal Register** on January 20, 1984 (49 FR 2466), which amended 7 CFR Part 1464 by eliminating a flue-cured tobacco program commonly referred to as the "4 leaf program." The "4 leaf program" permitted flue-cured tobacco producers who agreed not to harvest the four bottom leaves on each stalk of tobacco produced on the farm to be eligible for price support loans for their tobacco if the planted acreage of tobacco did not exceed 110 percent of the effective farm acreage allotment. Before implementation of the "4 leaf program," a large percentage of lower stalk flue-cured tobacco was pledged as collateral for price support loans which created the potential for substantial losses to the Commodity Credit Corporation. Although the "4 leaf program" contributed to a reduction in the quantity of lower stalk tobacco pledged as collateral for price support loans, substantial quantities of such tobacco continued to be pledged as loan collateral. Therefore, effective with the 1980 crop of flue-cured tobacco, the Department discontinued price support loans for certain grades of lower stalk flue-cured tobacco. As a result of this action, the quantities of lower stalk tobacco pledged as loan collateral have been reduced dramatically and it is anticipated that such tobacco will remain at levels which will not adversely affect its marketability.

One comment was received in response to the interim rule published in the **Federal Register** on January 20, 1984 (49 FR 2466). The commenter, a flue-cured tobacco producer, opposed eliminating the "4 leaf program" because producers could not make a profit on lower stalk tobacco due to the high cost of leasing a flue-cured tobacco acreage allotment and marketing quota and high production costs.

The Department, however, has determined that the "4 leaf program" is no longer needed since price support loans have been discontinued on certain grades of lower stalk tobacco and the need for which the program was originally instituted no longer exists.

List of Subjects in 7 CFR Part 1464

Price support program, Tobacco.

Final Rule

Accordingly, the interim rule which was published at 49 FR 2466 is adopted as a final rule without change.

Signed at Washington, D.C., on June 1, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84–15187 Filed 6–5–84; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316a

Residence, Physical Presence and Absence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adds the International Centre for Settlement of Investment Disputes, International Criminal Police Organization, International Development Association, International Food Policy Research Institute, International Maritime Satellite Organization, Multinational Force and Observers, and World Intellectual Property Organization to the list of organizations determined to be international organizations under the International Organizations Immunities Act. These organizations are eligible to confer constructive residence for naturalization purposes for their overseas employees.

The rule deletes the Coffee Study Group and Southeast Asia Treaty Organization. The rule also provides the new names for the Inter-American Institute, formerly the Inter-American Institute of Agricultural Science, and the International Institute for Cotton, formerly the International Cotton Institute.

These changes are made pursuant to Executive Order.

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633-3048.

For Specific Information: Thomas E. Cook, Immigration Examiner, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: Section 316(b) of the Immigration and Nationality Act, 8 U.S.C. 1427(b), allows for certain absences abroad by lawful permanent residents of the United States to preserve residence and be counted toward the residence requirements for naturalization. Among other things, employment overseas by a public international organization of which the United States is a member by treaty or statute, and by which the alien was not employed until after being lawfully admitted for permanent residence qualifies for the constructive resident benefit. 8 CFR 316a.4 lists those public international organizations which qualify under the International Organization Immunities Act. Absences abroad in the employment of these organizations will be counted as constructive residence in establishing the residence requirements for naturalization, provided all conditions of 8 U.S.C. 1427(b), which lists the requirements for naturalization are satisfied.

The International Centre for Settlement of Investment Disputes, International Criminal Police Organization, International Development Association, International Food Policy Research Institute, International Maritime Satellite Organization, Multinational Force and Observers, and World Intellectual Property Organization have been designated by Executive Order as public international organizations of which the United States is a member by statute.

The Coffee Study Group and Southeast Asia Treaty Organization were deleted by Executive Order. The Institute of Agricultural Science has been renamed the Inter-American Institute for Cooperation on Agriculture, and the International Cotton Institute has been renamed the International Institute for Cotton.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds to the present listing of recognized public international organizations. In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section (1)(a) of E.O. 12291.

List of Subjects in 8 CFR Part 316a

Citizenship and naturalization, International organizations.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

§ 316a.4 [Amended]

1. In § 316a.4, the listing of international organizations is amended by adding in alphabetical sequence, "International Centre for Settlement of Investment Disputes" (E.O. 11966, 1/19/77), "Criminal Police Organization" (E.O. 12425, 6/16/83), "International Development Association" (E.O. 11966, 1/19/77), "International Food Policy Research Institute" (E.O. 12359, 4/22/82), "International Maritime Satellite Organization" (E.O. 12238, 9/12/80), "Multinational Force and Observers" (E.O. 12359, 4/22/82), and "World Intellectual Property Organization" (E.O. 11866, 6/18/75).

2. In § 316a.4, the listing is also amended by removing from the list the "Coffee Study Group" and the "Southeast Asia Treaty Organization" which were revoked by E.O. 12033, 1/10/78.

3. In § 316a.4, the listing is further amended by substituting "Inter-American Institute for Cooperation on Agriculture" (E.O. 9751, 7/11/46), for "Inter-American Institute of Agriculture Sciences," and "International Institute for Cotton" (E.O. 11283, 5/27/66), for "International Cotton Institute."

(Sec. 316 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1427)

Dated: May 30, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-14964 Filed 6-5-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ASW-19; Amdt. 39-4870]

Airworthiness Directives; Hughes Helicopters, Inc., Model 369D and 369E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one-time inspection for interference between rivets in the control rod tunnel web and the longitudinal mixer control rod on certain Hughes Helicopters, Inc., Model 369D and 369E helicopters. This interference could possibly result in loss of control of the helicopter rotor system.

DATE: Effective June 6, 1984.

Compliance required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Hughes Helicopters, Inc., Centinela

Avenue and Teale Street, Culver City California 90230.

A copy of the Mandatory Service Information Notice is contained in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Jerry Sullivan, Aerospace Engineer, Airframe Section, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, telephone (213) 536-6166.

SUPPLEMENTARY INFORMATION: There have been reports of interference between the longitudinal mixer control rod and the rivets of the doubler to the control rod tunnel web which could possibly result in loss of control of the helicopter rotor system. Prior to takeoff, while conducting a cyclic control freedom check, the pilot noted binding of the longitudinal cyclic in the extreme aft position. Subsequent investigation revealed that the longitudinal mixer control rod had been gouged in several places by interference with rivets to a depth equal to approximately one-half of its wall thickness. Hughes Helicopters, Inc., has found two other cases of interference on Model 369E helicopters since this situation has come to light. Modification of the doubler installation, or replacement of the doubler is necessary to prevent such interference. Additionally, inspection of the control rod for possible damage is required.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires a one-time inspection for interference between rivets in the control rod tunnel web and the longitudinal mixer control rod and for a damaged control rod on certain Hughes Helicopters, Inc., Model 369E helicopters. Also affected is Hughes Helicopters, Inc., Model 369D helicopter, Serial Number 110871D.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days. This AD applies to 42 aircraft. It is estimated that the one-time cost of compliance is less than $240,000.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Hughes Helicopters, Inc., (Hughes Helicopters): Applies to certain Model 369D and 369E helicopters certificated in all categories.

Compliance is required within 10 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent interference or binding and possible loss of longitudinal cyclic control in flight, accomplish the following:

For Hughes Helicopters, Inc., Model 369D, Serial No. 110871D only, and Model 369E Helicopters, Serial Nos. 0001E through 0027E, 0029E through 0036E, and 0038E through 0043E, with longitudinal mixer control rod Part Number (P/N) 369A7011, and doubler P/N 369D22509-51 installed.

(a) Comply with procedures a., b., and d. through k. under PART I of Hughes Helicopters, Inc., Mandatory Service Information Notice EN-13 or equivalent procedures approved under paragraph (c) of this AD.

Note.—Procedure c. under PART I concerns an inspection for proper number of rivets in P/N 369D22509-21. Compliance with this procedure and installation of rivets are recommended.

(b) If the control rod is damaged or control rod clearance is less than 0.21 inch, while performing procedures f. or g. under PART I or approved equivalent procedures, comply with PART II of Mandatory Service Information Notice EN-13 or an equivalent method approved under paragraph (c) of this AD.

(c) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

This amendment becomes effective June 6, 1984.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Fort Worth, Texas on May 11, 1984.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84-14448 Filed 6-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ASW-13; Amdt. 39-4866]

Airworthiness Directives; Sikorsky Aircraft Division Model S-61 L/N/A Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspection of the intermediate gearbox and tail gearbox flanges for cracks on Sikorsky S-61, L/N/A series helicopters. This AD is prompted by a report of a fractured intermediate gearbox output flange which resulted in separation of the tail rotor, tail rotor gearbox, and pylon drive shaft, with subsequent hazardous loss of directional control of the helicopter.

DATES: Effective June 6, 1984. Compliance schedule—As prescribed in body of AD.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, ANE-153, FAA, New England Region, Boston Aircraft Certification Branch, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7332.

SUPPLEMENTARY INFORMATION: In addition to the fractured flange resulting in loss of the tail rotor, tail gearbox, and pylon drive shaft, there have been three reports of cracks on pylon drive shaft flanges and on intermediate gearbox output flanges. These cracks were discovered during routine maintenance and inspection activities. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires inspection of the intermediate gearbox, tail gearbox, and pylon drive shaft flanges.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and

good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Sikorsky Aircraft Division: Applies to all Sikorsky Model S-61 L/N/A series helicopters, certificated in all categories and authorized for flight with gross weights in excess of 19,500 pounds, when equipped with the following tail rotor drive system components:

a. Flange Part Number (P/N) S6135-66228-0 installed at the input and output couplings of the intermediate gearbox.

b. Flange P/N S6135-64013-0 installed at either end of the pylon drive shaft and at the aft end of the section IV tail drive shaft (shaft immediately forward of the intermediate gearbox).

c. Flange P/N S6135-66657-0 installed at the input coupling of the tail gearbox.

Compliance is required as indicated (unless already accomplished).

To intercept impending failure of the flanges identified above, accomplish the following:

d. For flanges with more than 800 hours' time in service since new, inspect the flange for cracks utilizing a 5-power or greater magnifying glass in the area surrounding the bolt attachments within the next 15 hours' time in service after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 15 hours' time in service from the last inspection.

e. If cracks are found, replace the flange and assure proper alignment of intermediate gearbox, tail gearbox, and pylon drive shaft before further flight.

f. Upon request, with substantiating data submitted through an FAA maintenance inspector, equivalent methods of compliance or adjustment in the inspection intervals or compliance time may be approved by the Manager, Boston Aircraft Certification Branch, FAA, New England Region.

This amendment becomes effective June 6, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to prevent an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Fort Worth, Texas, on May 8, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-14450 Filed 6-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24102; Amdt. No. 1270]

Air Traffic and General Operating Rules; Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8660-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP

amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Index

List of Subjects in 14 CFR Part 97

Approaches, Standards instrument.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

§ 97.23 [Amended]

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

* * * *Effective August 2, 1984*

Casa Grande, AZ—Casa Grande Muni, VOR RWY 5, Amdt. 1
Cage, OK—Gage-Shattuck, VOR-A, Amdt. 9

* * * *Effective July 19, 1984*

Bad Axe, MI—Huron County Memorial, VOR RWY, 3, Amdt. 9
Bad Axe, MI—Huron County Memorial, VOR RWY, 21, Amdt. 8
Batavia, NY—Genesee County, VOR-A Amdt. 2
Dansville, NY—Dansville Muni, VOR/DME RWY 18, Amdt. 2
Hornell, NY—Hornell Muni, VOR/DME-A, Amdt. 3

* * * *Effective July 5, 1984*

Fort Wayne, IN—Fort Wayne Muni (Baer Fld), VOR or TACAN RWY 22, Amdt. 9

§ 97.25 [Amended]

2. By amending Part 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

* * * *Effective August 2, 1984*

Houston, TX—Hull Field, LOC RWY 35, Amdt. 1

* * * *Effective July 19, 1984*

Washington, D.C.—Washington National, LDA RWY 18, Amdt. 12
Washington, D.C.—Washington National, LDA/DME RWY 18, Orig.
Westhampton Beach, NY—Suffolk County, LOC BC RWY 6, Amdt. 2

* * * *Effective July 5, 1984*

Moline, IL—Quad-City LOC RWY 27, Amdt. 4
Elko, NV—Elko Muni-J.C. Harris Field, LDA/DME RWY 23, Amdt. 1
Houston, TX—William P. Hobby, LOC BC RWY 22, Orig.

§ 97.27 [Amended]

3. By amending Part 97.27, NDB and NDB/DME SIAPs identified as follows:

* * * *Effective July 19, 1984*

Portland, ME—Portland Intl Jetport, NDB RWY 11, Amdt. 14
Penn Yan, NY—Penn Yan, NDB RWY 28, Amdt. 3
Westhampton Beach, NY—Suffolk County, NDB RWY 24, Amdt. 2
Portsmouth, VA—Hampton Roads, NDB RWY 2, Amdt. 3

* * * *Effective July 5, 1984*

Moline, IL—Quad-City, NDB RWY 9, Amdt. 26

§ 97.29 [Amended]

4. By amending Part 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SLAPs identified as follows:

* * * *Effective August 30, 1984*

Kahului, HI—Kahului, ILS RWY 2, Amdt. 18

* * * *Effective July 19, 1984*

Portland, ME—Portland Intl Jetport, ILS RWY 11, Amdt. 19
Portland, ME—Portland Intl Jetport, ILS RWY 29, Amdt. 2
Westhampton Beach, NY—Suffolk County, ILS RWY 24, Amdt. 6

* * * *Effective July 5, 1984*

Moline, IL—Quad-City, ILS RWY 9, Amdt. 26
Provinceton, MA—Provincetown Muni, ILS RWY 7, Amdt. 1
Providence, RI—Theodore Francis Green State, ILS RWY 23L, Amdt. 2
Providence, RI—Theodore Francis Green State, ILS/DME RWY 34, Amdt. 3

§ 97.31 [Amended]

5. By amending Part 97.31 RADAR SIAPS identified as follows:

* * * *Effective August 2, 1984*

New Orleans, LA—Lakefront, RADAR 1, Amdt. 4, Cancelled
New Orleans, LA—New Orleans Intl (Moisant Field), RADAR 1, Amdt. 12

* * * *Effective July 19, 1984*

Bangor, ME—Bangor Intl, RADAR-1, Amdt. 2
Portland, ME—Portland Intl Jetport, RADAR-1, Amdt. 1
Toledo, OH—Toledo Express, RADAR-1, Amdt. 13

* * * *Effective July 5, 1984*

Anchorage, AK—Anchorage Intl, RADAR-2, Orig., Cancelled
Moline, IL—Quad-City, RADAR-1, Amdt. 6

§ 97.33 [Amended]

6. By amending Part 97.33 RNAV SIAPs identified as follows:

* * * *Effective July 19, 1984*

Manchester, NH—Manchester Arpt/Grenier Industrial Airpark, RNAV RWY 6, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on June 1, 1984.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84-14673 Filed 6-5-84; 8:45 am]
BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 291

Domestic Cargo Transportation; Reporting Requirements

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Approval of Extension of Reporting Requirements by the Office of Management and Budget.

SUMMARY: The Civil Aeronautics Board has extended the reporting requirements in Part 291 of the Board's Economic Regulations governing domestic cargo

carriers. The requirements for applications (§ 291.11), recordkeeping (§ 291.23) and notification for certain transactions (§ 291.33) were extended through December 31, 1984. The Office of Management and Budget approved this extension under OMB No. 3024–0022. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES: Effective: May 16, 1984. Adopted: May 31, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 291

Air carriers, Antitrust, Freight, Insurance, Reporting and recordkeeping requirements.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–15048 Filed 6–5–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–164 (Texas—32); Order No. 381]

High-Cost Gas Produced From Tight Formations; Texas

Issued June 4, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Federal Energy Regulatory Commission adopts the recommendation of the Railroad Commission of Texas that a portion of the Granite Wash Formation in the Anadarko Basin in Ochiltree, Lipscomb, Roberts, Hemphill and Wheeler Counties, Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Elisabeth Pendley, (202) 357–8511; or Walter W. Lawson, (202) 357–8556.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

[Docket No. RM79–76–164 (Texas–32); Order No. 381]

High-Cost Gas Produced From Tight Formations; Final Rule

Issued: June 4, 1984.

Based on a recommendation made by the Railroad Commission of Texas (Texas), the Commission amends its regulations [1] to include a portion of the Granite Wash Formation in the Anadarko Basin in Ochiltree, Lipscomb, Roberts, Hemphill and Wheeler Counties, Texas, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on February 28, 1983.[2]

Evidence submitted by Texas supports the assertion that the Granite Wash Formation, located in the Anadarko Basin in Ochiltree, Lipscomb, Roberts, Hemphill and Wheeler Counties, Texas, meets the guidelines contained in § 271.703(c)(2). The Commission adopts this recommendation.

This amendment shall become effective July 5, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

[1] 18 CFR 271.703(d) (1983).

[2] 48 FR 9294, March 4, 1983. Comments on the proposed rule were invited and no comments were received. No party requested a public hearing and no hearing was held.

2. Section 271.703 is amended by adding paragraph (d)(165) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(165) *Granite Wash Formation in Texas.* RM79–76–164 (Texas—32). (i) *Delineation of formation.* The Granite Wash Formation in the Anadarko Basin is located in the panhandle area of Texas Railroad Commission District 10. The designated area includes all of Hemphill and Roberts Counties; Sections 45 through 396 of Block 43, H&TC RR Survey, Lipscomb and Ochiltree Counties; Sections 89 through 152 of Block 13, T&NO RR Survey, Ochiltree County; and all sections north of an east-west line passing through the southern boundary of Section 21, Block A–9 in Wheeler County except Sections 3, 5, and 6, A.B.&M. Survey, and Section 4, Block L, J.M. Lindsey Survey.

(ii) *Depth.* The Granite Wash Formation is that interval from the top of the A–1 zone to the base of the Granite Wash Formation. The top of the A–1 zone ranges in depth from 6,934 feet in Roberts County to 11,386 feet in Wheeler County.

[FR Doc. 84–15092 Filed 6–5–84; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 103

[T.D. 84–111]

Disclosure of Information on Vessel Manifests

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes minor changes in a document which amended the Customs Regulations relating to the disclosure of information on cargo declarations of inward vessel manifests under § 103.14, Customs Regulations (19 CFR 103.14). The changes are being made because of a supplemental consent order of the U.S. District Court For The District of Columbia. The document was published in the **Federal Register** on Thursday, May 10, 1984 (49 FR 19952).

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Doris B. Robinson, Regulations Control & Disclosure Law Division, U.S.

Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8681).

SUPPLEMENTARY INFORMATION:

List of Subjects in 19 CFR Part 103

Customs duties and inspection, Freedom of information.

Background

In FR Doc. 84–12721, appearing as T.D. 84–111 on page 19952 in the issue of Thursday, May 10, 1984, the following changes are made:

In § 103.14(a) the word "may" in the introductory text is changed to the word "shall".

2. In § 103.14(d)(1)(i) the word "representative" is added after the words "or authorized employee,".

3. In § 103.14(d)(1)(iv) the first two sentences are removed and the following sentence is inserted in their place, the sentence reads as follows:

§ 103.4 Information on vessel manifests and summary statistical report.

* * * * *

(d) * * *

(1) * * *

(iv) Each certification meeting the above requirements and approved by Customs will be valid for a period of two (2) years from the date of its approval. * * *

* * * * *

(R.S. 251 as amended, sec. 624, 46 Stat. 759) (5 U.S.C. 301; 19 U.S.C. 66, 1624))

Dated: June 4, 1984.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 84–15305 Filed 6–5–84; 10:17 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 83F–0379]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tris(2-methyl-4-hydroxy-5-*tert*-butylphenyl)butane as an antioxidant in closures with sealing gaskets for food containers. This action responds to a petition filed by ICI Americas, Inc.

DATES: Effective June 6, 1984; objections by July 6, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 8, 1983 (48 FR 55045), FDA announced that a petition (FAP 3B3758) had been filed by ICI Americas, Inc., Wilmington, DE 19897, proposing that the food additive regulations be amended to provide for the safe use of tris(2-methyl-4-hydroxy-5-*tert*-butylphenyl)butane as an antioxidant in closures with sealing gaskets for food containers conforming with 21 CFR 177.1210.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. FDA is also inserting the Chemical Abstracts Service (CAS) Registry Number in the regulation for this additive for identification purposes.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 178 is amended in § 178.2010(b) by adding a CAS Registry number, and a new entry to the limitations column, for the substance "Tris(2-methyl-4-hydroxy-5-*tert*-butylphenyl)butane," to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Tris(2-methyl-4-hydroxy-5-*tert*-butylphenyl)butane (CAS Reg. No. 1843–03–4).	For use only: * * * 7. At levels not to exceed 1 percent by weight of closure-sealing gasket compositions complying with § 177.1210(b) of this chapter.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 6, 1984, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective June 6, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: May 29, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-15094 Filed 6-5-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Clindamycin Hydrochloride Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by the Upjohn Co. providing for safe and effective use of clindamycin hydrochloride capsules in dogs for treatment of wound infections and abscesses caused by *Staphylococcus aureus.*

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed NADA 120-161 providing for use in dogs of Antirobe® Capsules (clindamycin hydrochloride) for treatment of wound infections and abscesses caused by *Staphylococcus aureus.* The NADA is approved and the regulations are amended to reflect the approval. The basis of this approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*) and (g) may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.446 to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.446 Clindamycin hydrochloride capsules.

(a) *Specifications.* Each capsule contains the equivalent of 25, 75, or 150 milligrams of clindamycin as the hydrated hydrochloride salt.

(b) *Sponsor.* No 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 2.5 milligrams per pound of body weight every 12 hours.

(2) *Indications for use.* For use in dogs for treatment of wound infections and abscesses caused by *Staphylococcus aureus.*

(3) *Limitations.* Discontinue use after 4 days if no improvement of acute infection is observed; do not use for more than 28 consecutive days; use with caution in animals receiving neuromuscular blocking agents as clindamycin may potentiate their action; prescribe with caution in atopic animals; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. June 6, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 30, 1984.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 84-15097 Filed 6-5-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) submitted by Ralston-Purina Co., providing for additional claims for a 10-gram-per-pound tylosin premix used to make finished feeds for swine.

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63199, has submitted a supplement to its previously approved NADA 43-387 for tylosin premix. The supplement provides for additional claims for a 10-gram-per-pound tylosin premix for use in making complete feeds for swine. The firm presently holds an approved application covering use of the premix in swine feed as provided for in § 558.625(f)(1)(vi)(*a*). The present supplement covers additional use in swine feed as provided for in § 558.625(f)(1)(vi) (*b*), (*c*), and (*d*). The supplement is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b)(5) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(5) To 017800: 0.4, 0.8, 1, and 8 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 10 grams per pound, paragraph (f)(1) (i) and (vi) of this section; 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date. June 6, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 30, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-15101 Filed 6-5-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-84-1176; FR 2003]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on Section 232 (Mortgage Insurance for Nursing Homes) and on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: May 29, 1984.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Director Financial Policy Division, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 426-4325. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been raised from 13.50 percent to 14.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (l) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies,or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs; Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 14.00 percent per annum with respect to loans insured on or after May 29, 1984.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum with respect to mortgages insured on or after May 29, 1984.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum with respect to mortgages insured on or after May 29, 1984.

* * * * *

Authority: (Section 3(a), 82 Stat. 113; (12 U.S.C. 1709-1); Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Dated: May 25, 1984.

Janet Hale,

Deputy Assistant, Secretary for Policy, Financial Management and Administration.

[FR Doc. 84-15172 Filed 6-5-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 955

Obtaining Financial Data Information

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 955—Obtaining Financial Data Information, of Chapter VII, Title 32. The source regulation, Air Force document AFOSIR 124-49, has been revised. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations having general applicability are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Kennedy, Headquarters Air Force Office of Special Investigations/XPP, Bolling Air Force Base, Washington, D.C. 20332, telephone (202) 767-5828.

SUPPLEMENTARY INFORMATION:

PART 955—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 955.

List of Subjects in 32 CFR Part 955

Banks, Banking, Credit, Investigations, Privacy.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-15114 Filed 6-5-84; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 2603-5]

Air Programs; Designation of Areas for Air Quality Planning Purposes; Rescission of Nonattainment Designation Status for the State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Rescission of nonattainment Designation.

SUMMARY: The Environmental Protection Agency (EPA) is rescinding its 1982 redesignation part of Porter County, Indiana, under the Clean Air Act. EPA is taking this action as a result of a recent Federal court decision. EPA's rescission leaves this area designated "unclassifiable".

DATE: This action was effective December 13, 1983.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner or Robert Miller, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353-2205.

SUPPLEMENTARY INFORMATION: On August 18, 1982, EPA redesignated part of Porter County, Indiana, from unclassifiable to nonattainment for total suspended particulates (TSP). (47 FR 35965). The Bethlehem Steel Corporation filed a petition challenging EPA's action in the United States Court of Appeals for the Seventh Circuit; and on December 13, 1983, the court overturned the redesignation. *Bethlehem Steel Corp. v. USEPA*, 726 F. 2d 1303. The court held that EPA had exceeded its authority under the Clean Air Act by unilaterally redesignating the area without a request from the State of Indiana to do so. As a result of the decision, EPA hereby rescinds its previous action redesignating part of Porter County, Indiana, to nonattainment for TSP and returns the attainment status to unclassifiable.

Since EPA is merely correcting the attainment status designation as it appears in 40 CFR 81.315, in a manner consistent with the court's decision, it is taking this action without opportunity for notice of comment.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air Pollution Control, National parks, Wilderness Areas.

Authority: This notice of rescission is issued under authority of Sections 107 and 301 of the Clean Air Act, as amended (42 U.S.C. 7407 and 7601).

Dated: May 31, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.315, Porter County's status in the attainment status designation table for TSP for Indiana is revised to read as follows:

§ 81.315 Indiana.

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Indiana-TSP				
Porter County			×	

[FR Doc. 84-15161 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[00000/R670; PH-FRL 2601-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals In or On Raw Agricultural Commodities; Ethylene Glycol Monobutylether; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document corrects an entry for ethylene gylcol monobutylether in 40 CFR 180.1001(d). It adds a "uses" section that was inadvertently omitted from the yearly revisions of the Code of Federal Regulations (CFR).

DATE: Effective on June 6, 1984.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Federal Register Unit (TS-788), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 201-382-3637.

SUPPLEMENTARY INFORMATION: The "uses" entry for "Ethylene glycol monobutylether" in 40 CFR 180.1001(d) was published as "solvent, cosolvent" in the **Federal Register** of November 25, 1971 (36 FR 22540). The entry appeared as such in 40 CFR revised through July 1, 1977. In 40 CFR revised as of July 1, 1978, the entry was inadvertently dropped, and the entry has not reappeared in any of the subsequent yearly revisions. This document corrects the omission.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 24, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(d) is corrected by adding the following "uses" entry for "Ethylene glycol monobutylether":

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Ethylene glycol monobutylether.		Solvent, cosolvent.
* * * * *		

* * * * *

[FR Doc. 84-14978 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-711; RM-4453]

FM Broadcast Station Winfield, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 249A to Winfield, Texas, as its first FM assignment, in response to a petition filed by HSH Associates.

EFFECTIVE DATE: July 31, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Winfield, Texas); MM Docket No. 83-711, RM-4453.

Adopted May 15, 1984.
Released: May 25, 1984.
By the Chief, Policy and Rules Division.

1. In response to a petition filed by HSH Associates ("petitioner"), the Commission adopted the *Notice of Proposed Rule Making*, 48 FR 34774, published August 1, 1983, proposing the assignment of FM Channel 249A to Winfield, Texas, as its first local service. Petitioner filed comments in support of the *Notice* and reaffirmed its interest in applying for the channel, if assigned.

2. The Commission has determined that the public interest could benefit from the requested assignment, since it could provide Winfield with its first FM service. The channel can be assigned in compliance with the maximum distance separation requirements.

3. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 31, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with regard to the community listed below:

City	Channel No.
Winfield, Texas	294A

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-15131 Filed 6-5-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-479; RM-4390]

TV Broadcast Stations in Paintsville and West Liberty, Kentucky, and Andrews, North Carolina; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein dismisses the request of Morgan Supply Company to assign UHF TV Channel 59 to West Liberty, Kentucky, as that community's first local television assignment. The request is dismissed due to a lack of continuing interest by any party.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), table of assignments, Television Broadcast Stations (Paintsville and West Liberty, Kentucky, and Andrews, North Carolina): MM Docket No. 83-479, RM-4390.

Adopted: May 15, 1984.
Released: May 25, 1984.
By the Chief, Policy and Rules Division.

1. The Commission has before it the *Further Notice of Proposed Rule Making*, 48 FR 54669, published December 6, 1983. Morgan Supply Company ("petitioner") originally sought the reassignment of unused and unapplied for UHF TV Channel 69 from Paintsville to West Liberty, Kentucky. In response to the *Notice of Proposed Rule Making*, the Commission was informed that two applications had been tendered for use of Channel 69 at Paintsville. As it is Commission policy not to reassign a channel in which an interest has been

expressed absent a compelling reason to do so, a staff engineering study was performed and found that Channel 59 could be assigned to West Liberty if the current zero offset on noncommercial educational Channel *59 at Andrews, North Carolina, was changed to a plus offset. Therefore, the *Further Notice* was issued to determine if the petitioner or any other party would pursue an application on the newly specified channel, if assigned.

2. Petitioner filed comments in response to the *Further Notice* stating that a construction permit had been granted for an operation on Channel 69 at Paintsville. It alleges that a television operation at West Liberty, only 25 miles away, would not be a viable enterprise and is therefore no longer interested in pursuing the assignment. No other comments were filed in this proceeding.

3. Commission policy is to assign a television frequency only where a continuing interest in operating a station has been expressed. Where, as here, there is no such continuing interest, the request is dismissed. Therefore, it is ordered, That the request of Morgan Supply Company is hereby dismissed.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–15132 Filed 6–5–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–15; RM–4061; FCC 84–243]

Signal Coverage Requirements Over Community Business and Factory Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is deleting the requirements for AM broadcast stations to provide premium signal coverage over business and factory areas within the community of license. All areas within the community of license will be served with a minimum 5 mV/m signal. This action alleviates regulatory burden by eliminating subjective judgments as to what constitutes "business areas" and by allowing greater flexibility in transmitter site selection. In addition, the requirement that licensees of directional AM facilities take field strength measurements in connection with their covering license application is deleted.

EFFECTIVE DATE: July 9, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau (202) 632–6302.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order

In the matter of Amendment of the AM Broadcast Station Rules With Respect to Signal Coverage Requirements Over Community Business and Factory Areas: MM Docket No. 83–15 RM–4061.

Adopted: May 24, 1984.

Released: June 1, 1984.

By the Commission.

Introduction

1. In this *Report and Order*, we are amending Part 73 of the Commission's rules with regard to signal coverage requirements for AM broadcasters. In general, these amendments reduce the coverage requirements for signal intensity over business and factory areas to 5 mV/m. In addition, the requirement for permittees of directional AM facilities to take field strength measurements in connection with their covering license application is deleted.

Background

2. On January 13, 1983, the Commission adopted a *Notice of Proposed Rule Making (Notice)* which set forth proposed amendments of Part 73 of the Commission's Rules concerning signal coverage requirements for AM broadcasters.[1] This *Notice* was initiated in response to a petition for rulemaking filed by the law firm of Miller and Fields, P.C. seeking deletion of the requirement in § 73.24(j) of the Commission's rules that AM broadcast stations place a 25 mV/m signal over a community's business district.[2]

3. Specifically, § 73.24(j) requires AM radio stations to provide 25 mV/m contour over the business district and a 5 mV/m contour (or, at night, the interference-free contour, if of a higher value) over all residential areas of the community of license. These signal coverage requirements are intended to guarantee that the principal community served by the AM facility receives premium reception service.[3] In particular, the 25 mV/m business coverage standard was established as a result of the propagation characteristics of the frequencies used by AM broadcasters. The higher signal level was chosen to overcome "noise" caused by electrical machinery and equipment generally associated with business districts. Also, AM frequencies tend to be absorbed by large steel-girded buildings, many of which are clustered in a community's business district. As stated in the *Notice*, however, the vast majority of AM grants today are for small communities outside metropolitan areas. Consequently, large buildings and man-made noise are no longer the problems they were when this rule was first established. In addition, growth patterns in many American cities have given rise to extensive suburban retail areas making it difficult to determine the community's principal business and factory areas.[4]

4. In addition to § 73.24(j), signal strength standards for AM broadcasters are also found in §§ 73.182(f) and 73.188(b)(1) of the rules. Section 73.182(f) specifies the signal levels necessary to render primary service to different types of service areas. For example, primary service to business and factory areas established a field strength of 10 to 50 mV/m and primary service to residential areas requires a field strength of 2 to 10 mV/m.[5] Section 73.188(b)(1) states that transmitters be located such that a minimum field strength of 25 to 50 mV/m will be obtained over the business of factory areas of the city. In the *Notice*, it was suggested that all of these signal

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[1] 48 FR 3385 (Published January 25, 1983).

[2] Public notice of the petition was given March 9, 1982, Report No. 138.

[3] Premium service which is required over an AM station's principal community, should not be confused with primary service as defined in § 73.182 of the Rules. The obligation to provide premium service imposes a higher standard than that required for primary service. *Greenwich Broadcasting Corp.*, 36 FCC 1294 (Rev. Bd. 1964).

[4] The signal coverage requirement is met if the requisite signal is put over the "principal" business and factory areas. *See. H–B–K Enterprises*, 13 RR 2d 1135 (Rev. Bd. 1968).

[5] When a range of values is given, the Commission has held that the lowest or minimum figure given is controlling. The Commission does not employ a sliding scale approach based on the size of a community. *S&W Enterprises, Inc.*, 37 FCC 220 (1964).

requirements be reduced to 5 mV/m or less.

5. The Commission also sought comment in the *Notice* on the appropriateness of § 73.151(a)(3) and its suggested deletion. In essence, this rule requires permittees of directional AM facilites to take field strength measurements in connection with their license applications to determine that the 25 mV/m contour covers the main business district and that the 5 mV/m and nighttime interference-free contours encompass the community of license. This rule, in effect, duplicates the intent of § 73.24(j) which requires a showing from construction permit applicants that the specified contours will cover the community of license.

Summary of the Comments

6. Of the sixteen initial comments received, thirteen were in favor of the proposed modifications.[5] Many commenters reiterate the problems associated with these particular rules that were posited in the *Notice*. They state that it has become increasingly difficult to identify "major business areas." They note that due to urban sprawl, business areas are no longer concentrated. They also note that suburban malls, following population shifts, have sprung up outside central business areas. Further, several commenters point out that most AM allocations are being made outside metropolitan areas that have no large industrial centers with intensive man-made "noise" that causes interference to AM reception. Some commenters point out that strict application of the 25 mV/m standard could actually serve to prevent new AM service by severely limiting transmitter site locations.

7. Many commenters also state that market forces will encourage broadcasters to provide the most extensive and highest quality service permitted. These commenters believe that market forces will adjust deficiencies in service better than regulatory enforcement efforts. The law firm of Putbrese and Hunsaker, for example, states that the constant flow of applications to the Commission for major and minor facility changes document the fact that licensees try to improve service and coverage to remain competitive. "[(T)]hus inadequate signal intensity to a given area within the licensee's principal community is self-correcting," according to this commenter.

8. Regulatory burden was cited as another reason to eliminate these rules. The commenters believe that the 25 mV/m standard is a limitation not necessarily related to the actual needs or realities of the community. In this regard, United Broadcasting states that AM applicants and broadcasters are forced to make subjective, speculative judgments about what constitutes the major business district of the city. Therefore, they believe that the rule is very difficult to comply with and that elimination of the rules would lessen the regulatory burdens imposed on AM applicants, especially those building new facilities.

9. Commenters also point out that requiring a 25 mV/m signal over today's business center is outmoded. The orginial intent of the rule when adopted was to ensure that heavy industrial areas received premium service. These industrial areas are now well served by older AM stations and FM stations. Some believe that the newer industrial areas do not create as much "noise" as older industrial areas. The commenters state that Part 15 and Part 18 insures against excessive radio frequency emissions created in industrial areas. Therefore, unlike the 1930's when the standards were originally adopted, higher signal levels are no longer necessary.

10. With regard to § 73.182(f) and 73.188(b)(1), the commenters insist that there is no need to retain the higher signal level reqirements. They believe a single 5 mV/m coverage standard is adequate for both the business and factory districts and the residential areas of a community. Similarly, with regard to Section 73.151(a)(3) which requires licensees of AM directional facilities to take field strength measurements that certify compliance with specified contours, the commenters feel that this rule is also not necessary. The commenters state that this testing is duplicative of the construction permit measurement requirements and is thus an unnecessary expense borne only by licensees of directional facilities. Further, the commenters state that the field strength measurements are approximate due to seasonal variations in soil conductivity and are therefore reliable only at the actual time tested.

11. Three commenters opposed deletion of the 25 mV/m standard (ABC, Radio Broadcast Licensees and Robert A . Jones, P.E.). Mr. Jones believes that deletion of this requirement would benefit those applicants in large cities where higher "noise" levels prevail. Mr. Jones points out that smaller cities have transmitter sites available to meet the 25 mV/m requirements and would therefore not be affected by deleting the rule. ABC and Radio Broadcast Licensees claim that noise intensity continues to be a problem. ABC suggests that high man-made noise devices (e.g., fluorescent lighting and computers) make necessary high signal levels over the core of the city. Radio Broadcast Licensees points out that the 25 mV/m requirement applies to the "principal" business area only, not all business areas and is therefore easier to comply with than was implied by the Commission in the *Notice*.

12. ABC and Radio Broadcast Licensees also state that the rules the Commission are proposing to eliminate or modify are needed to uphold the thrust of Section 307(b) which assures a fair, efficient and equitable distribution of radio service. They believe that the retention of the premium business area coverage standards are critical in view of the proposed elimination of Suburban Community, Berwick and de facto reallocation policies.[6] The Radio Broadcast Licensees claim that a 25 mV/m standard would permit stations to move their transmitting facilities toward larger nearby markets. Likewise, ABC believes that the 25 mV/m standard is necessary so that a station will not abandon its community.

13. Both ABC and Radio Broadcast Licensees suggest that perhaps coverage requirements should be redefined rather than deleted. Both suggest a requirement of a 15 mV/m signal over an Arbitron metro area or a 10–15 mVm signal over a 5 mile radius around the main post office of the community of license. Robert A. Jones suggests a 12.5 mV/m standard as a compromise. ABC and Radio Broadcast Licensees propose retaining the waiver process and Radio Broadcast Licensees recommends that licensed stations should have grandfathered rights as to *new* business districts within the community of license.

Discussion

14. Most of the commenters support the Commission's position as explained in the *Notice*. The initial reason for the 25 mV/m signal requirement was to overcome "noise" created in the industrial centers of cities. However, as stated in the *Notice*, growth patterns in many older established cities have given rise to extensive and widely scattered suburban retail and industrial areas with a subsequent decline in central

[5] The list of commenters appears as Appendix B. There were 16 comments and four reply comments filed in response to the *Notice*.

[6] *See Report and Order*, BC Docket No. 82-320, (48 FR 12094), March 23, 1983. This *Report and Order* is under reconsideration.

business districts. These newer suburban retail and industrial areas generally do not have the signal problems (such as, many large steel-girded buildings and intensive man-made noise) associated with older industrial centers. Furthermore, newer AM allocations are generally going to smaller communities whose central or principal business centers in all likelihood do not create the man-made noise typically generated by older industrial centers. Accordingly, a 25 mV/m coverage requirement is not necessary to provide adequate service to these business districts. Therefore, strict interpretation of the rule requiring 25 mV/m signal over every widely scattered principal business district could in effect require 25 mV/m signal coverage for the entire community.

15. In addition, broadcasters' revenues are determined in large part by the size of their audience. Thus, we believe that licensees have strong market incentives to cover the greatest potential audience with the most effective signal. Should a certain signal level be needed to reach a potential area or particular audience, the licensee may produce such a signal level without the urging of Commission requirements. In this regard, we believe that broadcasters will not reduce transmitter power. Furthermore, a 5 mV/m standard for the principal community of license would appear to be adequate to meet the basic needs of a community without overburdening a licensee with essentially a tiered service requirement.

16. A 5 mV/m minimum coverage standard also alleviates some problems of finding suitable transmitter sites. Obviously, a 25 mV/m standard over certain sections of the community either eliminates some potential locations for transmitters or in effect requires 25 mV/m over the entire community if there are many widely scattered business and factory areas to cover. In either case, the licensee may be forced to choose a site which is unnecessarily costly. Further, to the extent that a licensee wishes to put a 25 mV/m signal over any or all of the community, he or she may do so at his or her own discretion.

17. A few commenters expressed concern over the possibility that licensees may move their transmitter away from the community of license toward larger nearby communities if the 25 mV/m standard is eliminated. According to ABC and Radio Broadcast Licensees, this would, in effect, subvert the intent of Section 307(b) of the Communications Act which assures the "fair, efficient, and equitable distribution of radio service among the several states and communities." The Commission does not foresee wholesale movement of transmitter sites by reducing the standard to 5 mV/m. Licensees will still have to serve the entire community with a 5 mV/m standard as before. Reducing the standard will however allow licensees more discretion in selecting transmitter sites. Several commenters stated that they had problems in finding and obtaining transmitter sites to comply with the rules and that the premium service standards were particularly onerous. A 5 mV/m standard relieves licensees of the burden of providing higher signal service to areas that may not be well defined. As stated previously, it is in the licensees' own best interests to serve as many people and as wide an area as the rules allow with adequate signal strength. Marketplace forces should serve to have the best signal exist wherever possible without artificial mandates regarding differing levels of signal coverage within a community. The Commission has already accepted a 5 mV/m coverage standard for the entire community of license. The Commission now feels that this standard is an adequate minimum for all areas within the community of license whether business, industrial or residential and that having higher signal levels in any area within the community of license is a decision best left to the licensee.

18. The Commission therefore amends §§ 73.24(j) and 73.188(b)(1), as described in the attached Appendix, to eliminate the separate signal coverage requirements for business and factory areas and adopt a single minimum premium coverage standard of 5 mV/m for all areas within the principal community of license for AM broadcasters. In addition, changes have been made to § 73.188 to modify or remove language referring to out-dated engineering practices. These changes are strictly editorial in nature and therefore the prior notice and comment requirement of the Administrative Procedures Act does not apply.

19. With regard to § 73.151(a)(3) which requires permittees of directional AM facilities to make field strength measurements in connection with their covering application, we find that this requirement is duplicative of showings required by § 73.24(j) and exacts an unnecessary burden on both the permittee and the Commission's staff. Accordingly, we are deleting this rule section. As stated in the *Notice*, this requirement only applies to directional AM facilities. The absence of a similar requirement with respect to nondirectional AM facilities has resulted in no significant public interest problems.

20. In the *Notice*, we proposed that § 73.182(f) be amended to delete the signal requirement for business and factory areas and to reduce the city residential area requirement to 2 mV/m. The *Notice* also proposed a reduction of the signal strength requirement in rural areas. However, in this last regard, § 73.182(f) specifies signal requirements for primary service based on population that would be in conflict with the values proposed in the *Notice*. Accordingly we will amend our rules to combine the requirements contained in §§ 73.182 (f) and (g) into a new § 73.182(f) and make certain other editorial changes. The primary service requirements will be as follows: 2 mV/m for communities with populations of 2,500 or more; and 0.5 mV/m for communities with populations less than 2,500. This change is editorial in nature and is consistent with past Commission interpretations of the primary service requirement.[7]

21. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of the Rules

The Commission has determined that the 25 mV/m coverage requirement for business areas within the community of license is outmoded and vague in its application and should not longer be required. A reduction to a 5 mV/m standard will be sufficient to serve all areas within the community of license. Reducing coverage standards within the community potentially benefits all AM licensees by allowing greater flexibility in locating transmitter sites. In addition, the Commission has deemed irrelevant a rule which in effect requires licensees of directional AM facilities to take field strength measurements that recertify compliance with differing coverage standards within the community of license. Licensees of all new directional AM facilities are therefore benefitted by removing the field strength measurement requirements.

II. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis, Commission assessment, and Changes Made as a Result.

A. Issues Raised

1. No issues or concerns were raised specifically in response to the initial regulatory flexibility analysis. The issue of reducing signal coverage within the community of license from 25 mV/m to 5 mV/m received generally favorable

[7] *See, for example*, 63 FCC 2d 824 (1977).

reactions. Some parties expressed concern that a reduction in coverage standards within a community allows stations to move their transmitters toward larger nearby population centers thus subverting the intent of Section 307(b) which mandates a fair, equitable distribution of service.

B. Assessment

1. The Commission views the relative absence of specific claims of adverse impact with respect to reducing signal coverage standards within a community, with the exception of Section 307(b) intentions, as confirmation of our initial analysis in which we suggested that the proposed amendments would lessen the burdens on AM applicants. The amendments are deregulatory in nature and would appear to have no potential for negative effects on small business.

C. Changes Made as a Result of Such Comments

None.

III. Significant alternatives considered and rejected

1. The Commission's other alternatives were: (1) Retain the 25 mV/m signal standard; or (2) adopt a reduced coverage standard between 25 mV/m and 5 mV/m. Neither of these options allow the full potential benefits of a 5 mV/m standard to accrue to AM applicants. These options were deemed too restrictive by the Commission and therefore rejected.

22. Authority for amending the rules is contained in Section 303 of the Communications Act of 1934, as amended.

23. Accordingly, it is ordered, that Part 73 of the Commission's Rules are amended as set forth in Appendix A, effective July 9, 1984.

24. It is further ordered, that the Secretary shall cause a copy of the *Report and Order,* including the regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et. seq.*) (1982).

25. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Part 73 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. Section 73.24 is amended by revising paragraph (j) to read as follows:

§ 73.24 Broadcast Facilities; showing required.

* * * * *

(j) That the 5 mV/m contour (or, at night, the interference-free contour, if of a higher field strength) encompasses the entire principal community to be served.

* * * * *

§ 73.151 [Amended]

2. In § 73.151, paragraph (a)(3) is removed and designated reserved.

3. Section 73.182 is amended by revising paragraphs (f) and (g) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(f) The groundwave signal strength required to render primary service is 2 mV/m for communities with populations of 2,500 or more; and 0.5 mV/m for communities with populations of less than 2,500. See § 73.184 for curves showing distance to various groundwave field strength contours for different frequencies and ground conductivities, and also see § 73.183, "Groundwave signals."

(g) The FCC will authorize the directional antenna for a Class IV station for daytime operation only with power in excess of 0.25 kW. In computing the degrees of protection which such antenna will afford, the radiation produced by this antenna will be assumed to be no less, in any direction, than that which would result from non-directional operation using a single element of the directional array, with 0.25 kW.

* * * * *

4. Section 73.188 is amended by revising paragraphs (a)(1), (b)(1) and (b)(2); removing paragraphs (c) and (d) and marking them reserved to read as follows:

§ 73.188 Location of Transmitters.

(a) * * *

(1) To adequately serve the community to which the station is to be authorized.

* * * * *

(b) * * *

(1) A minimum field strength of 5 mV/m will be obtained over the entire principal community to be served.

(2) The population within the blanket contour does not exceed that specified by § 73.24(g).

* * * * *

(c) [Reserved]

(d) [Reserved]

* * * * *

Appendix B

List of Commenters

ABC Inc.
Radio Broadcast Licensees—joint comments
Fort Myers Broadcasting—WINK
Cecil Lynch, Consulting Engineer
National Radio Broadcasters Association
Town and Country Radio, Inc.
Sterling Recreation Organization Co.
NBC, Inc.
United Broadcasting Co., Inc.
National Association of Broadcasters
Southern Minnesota Broadcasting Co.
Putbrese & Hunsaker (law firm)
Robert A. Jones, R.P.E.
WBZK
Ethnic Radio, Inc.
Miller and Fields, P.C.

Reply Comments

ABC, Inc.
Radio Broadcast Licensees
Doylan Forney
Bell Broadcasting Co.

[FR Doc. 84–15133 Filed 6–5–84; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 76

[Docket No. 20423; FCC 84–114]

Cable Television Systems and Postponement of Divestiture Requirement; Relative to Prohibited Cross-Ownership in Existence on or Before July 1, 1970

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends §76.501(b)(2) of the Commission's Rules, grandfathering all existing non-egregious cable/broadcast television cross-interests. For those cases defined as egregious, further action is pending the conclusion of a rulemaking proceeding involving a general reevaluation of §76.501.

This action is taken in response to comments to the Further Notice of Proposed Rulemaking issued by the Commission.

This action will minimize the disruption of service and losses to the public which might have resulted from a strict divestiture requirement.

EFFECTIVE DATE: July 9, 1984.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

List of Subjects in 47 CFR Part 76

Cable television, Television broadcasting.

Third Report and Order; Proceeding Terminated

In the matter of Amendment of Part 76, Subpart J, of the Commission's Rules and Regulations Relative to Cable Television Systems; and Postponement of Divestiture Requirement of §76.501 Relative to Prohibited Cross-Ownership in Existence on or before July 1, 1970; Docket No. 20423.

Adopted: March 29, 1984.
Released: June 1, 1984.

By the Commission: Commissioner Rivera dissenting and issuing a statement.

Introduction

1. In this *Third Report and Order*, we are abandoning our proposal to require divestiture of all cross-owned cable television and local broadcast television interests. For those cable system/broadcast station cross-interests considered "non-egregious" (i.e., the broadcast station is not the only commercial broadcast station providing principal community service to the cable community), we are reaffirming our earlier decision to grandfather such combinations that were in existence on or before July 1, 1970. With regard to "egregious" situations, we are defering comment and action until the Commission considers a pending petition requesting reevaluation of §76.501 of the Rules.

Background

2. Section 76.501 of the Commission's Rules prohibits cross-ownership between a cable television system and a national television network or a local television broadcast station. Specifically, § 76.501(a)(2) restricts cross-ownership between a cable television system and a broadcast station whose predicted Grade B contour overlaps the area served by the cable system. Section 76.501(b)(2) grandfathers those "non-egregious" cable/broadcast station cross-interests that were in existence on or before July 1, 1970 and defines the effective date to be applied to cause divestiture of these "egregious" cable/local television entities which existed prior to the adoption of the cross-ownership restrictions.[1]

3. By *Further Notice of Proposed Rulemaking (Further Notice)*, Docket 20423, 81 FCC 2d 150 (1980), the Commission proposed a requirement of complete divestiture of all remaining cable television/local broadcast station cross-interests and requested comments regarding the adoption of a waiver policy for such divestiture cases. Specifically, comments were sought regarding: (1) the differences between cable television/broadcast station and broadcast station/newspaper divestiture situations; (2) the factors pertinent in evaluating the issues involved in cable/broadcast divestiture; and (3) "all criteria appropriate for evaluating *ad hoc* whether divestiture is a necessary precondition for the attainment of the public interest objectives underlying our cross-ownership rules." [2]

4. The long history of Commission policy concerning cable/broadcast cross-ownership was fully detailed in the *Further Notice* and will not be repeated here.[3] We note, however, that since 1970 when the present rule prohibiting common ownership of cable systems and broadcast television stations was adopted, the Commission has repeatedly addressed the issue of divestiture.[4] In 1975, we revisited the divestiture issue and amended the rules to grandfather most the then-existing cable/broadcast cross-interests, and to require divestiture only in situations deemed "egregious." [5] Interested parties sought judicial review of the 1975 decision, but the Commission requested, and was granted, remand of that judicial proceeding.[6] The proceeding we conclude herein commenced as a consequence of the Commission-requested remand.

5. When we issued the *Further Notice* we reviewed the public interest goals on which the cross-ownership rules had been based. At that time, we proposed to require divestiture of all commonly-owned cable/broadcast interests, based on what we believed to be an "inherent conflict" between the operations of the two entities and the conviction that such conflict would lessen competition in the economic and ideological marketplaces. In light of our review of the comments before us,[7] we are no longer persuaded that complete divestiture is an appropriate means for achieiving our public interest goals of enhanced competition in both the economic marketplace and the marketplace of ideas. Accordingly, for the reasons set forth below, we will not require divestiture of any of the remaining, non-egregious, commonly-owned cable/broadcast interests.[8]

Summary of Comments

6. Although the *Further Notice* was directed specifically to issues concerning the divestiture requirements of § 76.501(b)(2), many commenters argue that § 76.501 in its entirety should be abandoned. Community Antenna Television, Inc. (CATA), Marsh Media, Ltd. (Marsh), and the National Association of Broadcasters (NAB), the strongest proponents for elimination of the rule, challenge our premise that there is an inherent conflict between the interests of cable system and broadcast station operators which adversely affects market competition. CATA argues that, in the absence of evidence of actual abuses or lack of competition in the market, any Commission action is based on "pure speculation." Marsh concurs that § 76.501 is premised on untested and theoretical presumptions, and as such, violates our "narrowly circumscribed jurisdiction to regulate CATV." Marsh would require a full evidentiary hearing to reevaluate the cross-ownership rule. In view of a pending petition filed by Marsh for deletion of § 76.501 and an accompanying review of the underlying

[1] Section 76.501(b)(2) of the Commission's Rules defines the effective date of § 76.501 relating to cross-ownership:

The provisions of subparagraph (2) of paragraph (a) of this section are not effective until August 10, 1977, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970 (*e.g.*, if a franchise were in existence on or before July 1, 1970), and will be applied to cause divestiture as to ownership interests proscribed herein only where the cable system is, directly or indirectly, owned, operated, controlled by, or has an interest in a non-satellite television broadcast station which places a principal community contour encompassing the entire community and there is no other commercial non-satellite television broadcast station placing a principal community contour encompassing the entire community.

[2] *Further Notice* at page 158.

[3] *Id.* at page 151 *et seq.*

[4] *See Second Report and Order*, Docket 18397, 23 FCC 2d 816 (1970), *recon. denied*, 39 FCC 2d 377 (1973), which prohibited common ownership of broadcast television stations and cable television systems within the Grade B contours of the broadcast stations. At that time, existing interests in violations of the rule were ordered to be divested within three years. The deadline was subsquently extended to five years. *Memorandum Opinion and Order* in Docket 18397, 39 FCC 2d 377 (1973).

[5] *Second Report and Order* in Docket 20423, 55 FCC 2d 540 (1975), *recon. denied* 58 FCC 2d 596 (1976). Divestiture was required only in limited "egregious" cases where there was common ownership between the cable system and the only commercial broadcast station providing principal community service to the cable community. *See* § 76.501(b)(2), note 1, *supra*.

[6] As a result of this remand, the divestiture requirement for egregious cases was stayed.

[7] A list of commenters is attached hereto as Appendix A.

[8] A list of existing cable system/local broadcast station combinations is attached hereto as Appendix B.

cross-interest prohibition, the NAB contends that any consideration of the imposition of a divestiture requirement would be "grossly unfair, patently arbitrary, and highly capricious."[9] Fetzer Broadcasting Company, Midessa Television Company, Inc., and CSIK, Inc., also argue for rescission of the rule. According to these commenters, there are no facts which indicate a need for it. They argue that in the absence of actual proof of widespread abuses, prohibition of cross-owned interests may well result in market situations contrary to the public interest.

7. In the vast majority of comments received, the parties oppose divestiture except in the most egregious cases, and support use of a liberal waiver policy.[10] Many commenters rely on the arguments advanced by the Commission in the *Second Report and Order* in Docket 18110 which required divestiture of commonly-owned broadcast/newspaper interests in 16 limited situations deemed to be egregious due to the absence of any other effective local media competition.[11] They argue that the standard adopted in Docket 18110 is appropriate here, and that any divestiture requirement which includes non-egregious cases, is inconsistent with our decision. Further, they argue that there are no new facts to justify a departure from the standard adopted in Docket 18110. Southern Cablevision, Inc. and others contend that the proposals of the *Further Notice* not only arbitrarily depart from the standards, but that they are founded on erroneous presumptions.

8. The commenters opposing divestiture in other than egregious cases also argue that the *Further Notice* proposal will not accomplish the desired ends of diversity. To the contrary, they cite several reasons to support their contention that forced divestiture will result in significant public harms which more than outweigh the benefits to flow from the proposed rule.

9. First, the facts indicate that the effect, if any, of cross-owned cable system/broadcast stations on the economic and ideological marketplaces is *de minimis*. In this regard, Frazier, Gross, & Clay, Inc. (Gross Study), was commissioned by Chronicle Broadcasting Company (Chronicle) and others to conduct a study of the competitive performance of cross-owned and non-cross-owned cable systems, to determine whether there was evidence of retardation of cable system potential by present cross-owners. The Gross Study concludes that there is no significant difference between utilization of cross-owned and non-cross-owned systems.[12] Commenter Marsh commissioned a similar study, conducted by economist Dr. James C. Miller, III. This study also concludes that "it does not appear that there is a marked difference in the characteristics of cross-owned systems."

10. Next, the commenters argue that divestiture will result in less local ownership of both cable systems and television stations. Chronicle conducted a study of cross-ownerships voluntarily divested since 1970 in which it identified 63 cross-owned cable systems and 19 cross-owned broadcast stations. Of the cable systems divested, 94% were sold to multiple system operators, nearly half of whom also own cable systems in the same market. Of the 19 broadcast stations divested, 95% were sold to non-local owners. This trend, the commenters contend, will continue should complete divestiture be required. According to Chronicle, forced divestiture can only be expected to increase the cable holdings of the largest multiple system operators and increase the number of non-local, multiply-owned broadcast stations.

11. The commenters' third argument addresses the issue of continuity of service. Liberty Communications, Inc., argues that forced divestiture will result in economic hardships to the entities required to divest, and in a substantial loss of financial and program stability to the cable systems. Glendive Broadcasting Corporation argues that divestiture must be balanced against the loss of stability and continuity of operations, reduction in local ownership, and the resulting reduction in owner-management. These factors, according to Glendive, coupled with the adverse impact as a result of local economic dislocations, will have a deleterious effect on market diversity.

12. Finally, these commenters argue that complete divestiture is inconsistent with Commission precedent and impinges impermissibly on protected constitutional freedoms. Many refer to our general unwillingness to require divestiture when adopting prospective rules, and cite as precedent our infrequent use of the requirement. Several also cite a line of cases, such as *Timkin Roller Bearing Co.* v. *U.S.*, 340 U.S. 593, 603 (1951), where the Supreme Court held that divestiture is not to be employed as a remedy "without regard to the type of violation or whether other effective remedies, less harsh, are available." Susquehanna Broadcasting Company argues that, in view of our 1975 decision to grandfather non-egregious combinations, any decision to require complete divestiture now would violate fundamental principles of procedural fairness. Susquehanna contends that deference should be given to cross-owners who, at least since 1975, have had reasonable expectations that their combinations would be permitted to continue. Chronicle agrees that to require divestiture of previously grandfathered combinations is patently unfair and violates the cross-owners' due process rights. The commenters conclude that a requirement of total divestiture would not withstand constitutional muster because it is neither premised on proof of actual abuses, nor is it the least drastic alternative to accomplish the goals of diversity.

13. Commenters who support our divestiture proposal argue that only truly independent and competitive sources can guarantee diversity in the economic and ideological marketplaces. The United States Department of Justice notes that since cable television's information carrying capacity, due to its multichannel nature, surpasses that of the other media, the impact of grandfathering co-located cable/broadcast situations is likely to be far more severe than that of grandfathering for other media. The Office of Communication of the United Church of Christ (UCC) concurs with the *Further Notice* that there is an inherent conflict of interests between cable systems and broadcast stations. UCC concurs that,

[9] On November 24, 1980, Marsh filed a petition to repeal § 76.501 (RM-3810). In addition, our Office of Plans of Policy has completed a Staff Report which examines the cable cross-ownership rules and recommends deletion of § 76.501. This proceeding, under the Administrative Procedure Act, is not broad enough to encompass this more general question regarding the validity of § 76.501. We anticipate considering that question in a separate proceeding.

[10] Since our *Further Notice* specifically requested comment regarding proposed criteria for waiver, the commenters submit extensive arguments on the issue. However, in light of our decision to grandfather non-egregious cross-interests and to abandon our waiver proposal, we will not summarize these comments.

[11] 50 FCC 2d 1046 (1975).

[12] The Gross Study relied on data from a variety of sources, including *Television Factbook*, Services Volume, *Broadcasting Yearbook*, and research conducted by Paul Kagan Associates and the law firm of Fletcher, Heald and Hildreth. After comparing the average characteristics of 48 cross-owned cable systems with 81 systems divested since 1970, the Gross Study concludes: (1) The results still indicate that the average cross-owned cable system is not significantly different from the average system nationally in terms of such general characteristics as number of basic subscribers, basic monthly rate, monthly pay rate, channel capacity and radio services: and, (2) by all objective measures, cross-owners appear to have developed their cable systems to the same degree as other system owners and are offering on them a variety of program options. *See* Chronicle comments at pages 14 and 28. *See also* joint comments of Midcontinent Broadcasting Company and Rock Island Broadcasting Company at page 36 *et seq.*

unlike broadcast stations and newspapers which compete only for advertising, broadcast stations and cable systems compete for advertising revenues as well as for audience viewership. Thus, cable/broadcast ownership presents more serious obstacles which substantially reduce the likelihood of achieving maximum program diversity in the market. This situation, according to UCC, coupled with recent trends toward concentration of control in the cable industry, reflects a need for strict regulatory policy to minimize potential harms. UCC contends that separate ownership of local television stations and cable systems is essential "if the public interest in increased program alternatives is to be given half a chance in the face of powerful trends toward even more homogenized programming."

14. The National Citizens Committee for Broadcasting (NCCB) also supports our divestiture proposal. NCCB argues that divestiture will maximize competition in the market and encourage development of the cable industry. According to NCCB, competition would generate sufficient revenues to provide the capital base needed to support additional services indigenous to the cable industry, such as public access channels, locally originated or leased channels that serve minority or other specialized audiences, and two-way communication services. Additionally, NCCB asserts that cable/broadcast cross-ownership violates the principles of Commission duopoly rules. NCCB contends that, owing to the "functional interchangeability" of broadcast stations and cable systems, as well as the nature of the competition between the two media, the potential for adverse, anti-competitive consequences is increased.

15. The supporters of our strict divestiture proposal, UCC, NCCB, and the Justice Department advocate adoption of a very limited waiver policy. Both the Justice Department and NCCB suggest a return to the original waiver standard adopted in 1970.[13] UCC would grant waivers only in rare circumstances where the cross-owner could demonstrate that divestiture would lead to less, rather than greater program diversity.

Discussion

16. The Commission has considered issues relating to cable television and local television station cross-owership in numerous formal rulemaking and inquiry proceedings. More than a dozen decisions in these proceedings were issued along with many other opinions in which the issue arose in an enforcement or waiver context or in a station licensing, assignment, or renewal proceeding. It has, however, remained an unsettled area because, with changes in video market competition, changed perceptions of the technology and role of cable television, and intervening litigation, views on the general value of this type of cross-ownership rule and on the question of requiring divestiture of existing interests, have repeatedly changed. Although some have urged in their comments that § 76.501 is based on untested and invalid theoretical presumptions and should be rescinded in its entirety, the scope of this proceeding is limited to the question of whether and to what extent a divestiture of existing cross-interests should be required. Although recent changes in the video landscape raise more general questions about the fundamental basis of these rules, we believe it useful to attempt to resolve the divestiture question separately, eliminating the uncertainty that has for so long affected operations in these cross-owned situations.

17. For purposes of this decision we take as given the goals on which these rules are based of increasing competition in the economic and ideological marketplaces, balanced in the divestiture context against our expressed concern with "other public consequences such as continuity of operations, local ownership, demand for capital equity and local dislocations."[14] In terms of the question of divestiture, many commenters argue and we agree, that the standard adopted by the Commission in Docket 18110, regarding broadcast/newspaper cross-ownership, is an appropriate model to follow here.[15] This standard has been reviewed and approved by the Supreme Court in the broadcast/newspaper station context and it therefore appears to be a useful point of departure for considering the issues now before us.[16]

18. In generally deciding against a divestiture requirement in Docket 18110, the Commission concluded that: (1) Divestiture could result in reduced local ownership; (2) divestiture could result in an undesirable break in continuity of operation as the new owner would lack the long knowledge of the community acquired by the prior owners; (3) divestiture could result in significant economic dislocations; (4) divestiture would result in the elimination of owners with long records of service to the public; and (5) divestiture would result in disruption of the industry and hardship for individual owners.[17] All of these factors, it was concluded, could result in undesirable losses of service to the public. More generally, the Commission concluded that divestiture was a harsh remedy "to be reserved only where the need is overwhelming and the evidence unambiguous* * *."[18] In affirming the Commission's judgment in this regard, the Supreme Court stated that "to the extent factual determinations were involved in the Commission's decision to grandfather most existing combinations, they were primarily judgmental or predictive in nature* * *. In such circumstances complete factual support in the record for the Commission's judgment or prediction is not possible or required* * *."[19]

19. While a number of parties and our own *Further Notice* in this proceeding have suggested that this precedent is not applicable here, it now appears to us in many respects to be similar. In both situations, the Commission's early decisions permitted cross-ownerships, in the absence of abuse, in order to encourage established owners to use their expertise for the developing technology.[20] Also, our concern in both contexts has been with the consequences of a forced sale of a television station. Whether such a sale results from a rule relating to newspaper cross-ownership or from a rule relating to local cable television system cross-ownership, the result is identical. Parties

[13] *Second Report and Order* in Docket No. 18397, *supra*, note 4, at page 821. Waiver applicants were required to demonstrate "that a cross-ownership ban would not result in greater diversity."

[14] *Second Report and Order*, Docket 20423, *supra*, at 544.

[15] In *Second Report and Order* in Docket 18110, *supra*, note 14, we held that the benefits of divestiture (the likelihood of increased diversity) must be balanced against the adverse consequences, including disruption of service, reduction in local ownership and control, and local economic dislocations. We reasoned, "under what circumstances then, should such ownership be disturbed? We have concluded that a mere hoped-for gain in diversity is not enough. Unlike prospective rules, divestiture introduces the possibility of disruption for the industry and hardship for individual owners." *Id.* at page 1078. Accordingly, we limited divestiture to those situations where we found that, without it, the likelihood of true diversity was minimal.

[16] *National Citizens Committee for Broadcasting* v. *FCC*, 436 U.S. 775 (1978).

[17] *Second Report and Order* in Docket 18110, 50 FCC 2d 1046, paras. 108–112 (1975).

[18] *Id.* at para. 114.

[19] *National Citizens Committee for Broadcasting* v. *FCC*, *supra*, slip op. at p. 46.

[20] See *First Order* in Docket 15415, 1 FCC 2d 387 (1965), at para. 7.

finding this analogy unpersuasive may simply feel that in these situations it is the cable system rather than the television station whose ownership will be transferred. Our own experience, as reflected in a study appended to the Chronicle Publishing Co. comments, indicates that this is not a correct assumption and that it frequently has been the broadcast station that changed hands. Even if the contrary were true, we see no reason why the same adverse consequences to the public would not result from the dislocation of existing cable television system owners. At the outset, therefore, it appears to us that the parallels between the two situations are rather direct and that the broadcast/newspaper precedent should be followed in the absence of other distinguishing or contervailing factors.

20. In the *Further Notice* we suggested that there were distinguishing factors relating to the inherent conflict of economic interests between cable systems and television broadcasters. However, on further review, and particularly on completion of a more detailed review of the market situations specifically involved here, we do not find this conflict to suggest a harsher divestiture standard than that previously adopted. There are, in fact, a number of considerations not previously stressed that suggest a less stringent divestiture standard for the cable/broadcast than for the broadcast/newspaper situation.

21. First, the rules in question here and those in the broadcast/newspaper situation were designed to foster diversity of ownership as a means of enhancing competition in the marketplace of ideas. In this regard, however, it should be readily apparent that it is local daily newspapers and television broadcast stations that are the primary sources of local news and public affairs programming and that are editorial forces in the debate over matters of local concern. This question of diversity of voices was the principal focus of Docket 18110 and the reason for the concern in that proceeding with existing patterns of ownership. Cable television systems are also potentially influential sources of information concerning local issues. They do not, however, approach daily newspapers and local television stations as opinion molders. Cable systems are very significantly increasing the diversity of programming and information available to the public through the carriage of satellite delivered news and other nonentertainment programming. That portion of the programming over which the cable system operator has direct editorial control, however, remains limited in comparison with the overall amount of programming distributed. At least with respect to the issue of diversity of viewpoints, we therefore conclude that a weaker case for divestiture is made out here than was shown to exist in the *Second Report and Order* in Docket 18110.

22. The other base for these cross-ownership rules—competition in the economic marketplace—although discussed in general in the *Further Notice* in this proceeding, was not specifically related to the individual situations actually involved in this proceeding. A review of the facts of these situations provides us with some additional reason to believe that the divestiture requirement proposed was an unnecessarily harsh one.[21] Although our primary concern is with local markets, we do note that the list of situations involved is not a long one and does not suggest any issue of national scope. Excluding the five situations identified as "egregious" under the existing rules, only thirteen other situations remain. Significantly the subscribers to the cable systems involved in these cross-ownership situations represent less than one half of one percent of the nation's television households and less than one percent of the total number of cable subscribers. The stations and systems identified represent a very small fraction of the more than 1400 television stations and 5700 cable television systems currently in operation. This sharply contrasts with the Commission's concern expressed in its *Memorandum Opinion and Order* in Docket 18397, 39 FCC 2d 377, 392 (1973), that in 1970 some 10% of the nation's cable subscribers were served by systems cross-owned by a co-located broadcaster. Looking to the remaining situations specifically, we find a number of reasons to suggest that divestiture is not as important, particularly in terms of economic competition, as it was thought to be when this proceeding was commenced. While these factors are not common to all of the situations, in the aggregate they suggest reason for a much reduced concern with permitting existing cross-ownerships to continue. They suggest, moreover, that it is highly likely that even if the rule was retained, waivers of the rule would be common enough to generally subsume the rule itself. A proper concern for the most effective use of our scarce administrative resources suggests that such an exercise should not be undertaken unless there appear to be significant benefits to the public involved.

23. Several specific factors weigh against diverstiture of the non-egregious co-located cable/broadcast situations. All but two of these cross-owned situations involved local owners. Many of these are individuals with few, if any, other media properties. Some of the cable systems are far removed geographically from the associated broadcast stations, significantly reducing the directness of the economic competition involved (see, for example, the situation involving the cable system in Sterling, Illinois, which is some fifty miles removed from the commonly-owned television station). Other situations are similar to that in Logan, Utah, where it is claimed that the cable system is outside the actual (as opposed to the predicted) Grade B contour of the cross-owned station. The small size of the cable community and cable subscriber base relative to the total circulation of the associated television station, in other instances, suggests the absence of direct competition for advertising revenues and reduces the possibility that any strategem could be developed to better the economic position of the cross-owner through reducing the output or raising the price of the broadcast station involved (KRON–TV, for example, is associated with cable systems whose total subscriber base represents approximately two percent of the station's total circulation). Also, some of the cable/station cross-ownerships involve satellite broadcast stations whose parent stations are far removed from the cable communities and which operate much like translators (KDLO–TV, Florence, South Dakota and KPLO–TV, Reliance, South Dakota are, for example, satellite stations [22]). Finally, overlaying these market specific situations is the fact that the Commission has never received any complaints concerning these cross-owned entities and there is no suggestion in the record of this proceeding demonstrating any concrete abuse that has resulted from the cross-ownership relations involved, all of which have been in existence for at least ten years and some of which stretch almost twenty years into the past.[23]

[21] Appendix B lists the situations involved. It does not include those situations where specific waivers of the rule have already been granted or where sales have been announced. Some corrections to the list attached to the *Further Notice* have also been made based on the comments received.

[22] In this regard see *Second Report and Order* in Docket 18110, 50 FCC 2d 1046, n. 6 (1975).

[23] *See* para. 9 *supra*, and accompanying study filed by Chronicle. Chronicle comments, Exhibit 2.

24. In light of these considerations we are no longer convinced that diversity will best be served by across-the-board divestiture. There are, as we said in *Second Report and Order* in Docket 18110 other public interest purposes which also concern us, and which we believe were not sufficiently addressed in the *Further Notice.* Divestiture is a harsh remedy. Its likelihood of aiding diversity must outweigh its detrimental effects on other public interest goals, such as stability and continuity of service. We believe that our decision in *Second Report and Order* in Docket 18110, and again in the *Second Report and Order* in Docket 20423, in which we limited the use of divestiture to only the most egregious cases, was correct. We said then, and we still believe, that the likelihood of substantial disruption of service and attendant losses to the public, in most cases, outweighs the potential aid to diversity.

25. This brings us to disposition of the so-called "egregious" cases. In the *Second Report and Order* in Docket 20423, we amended § 76.501 to define those cable/broadcast cross-ownership interests which we deemed egregious, and, accordingly, required divestiture.[24] In the *Further Notice* we listed 25 cross-owned situations, 8 of which were subject to divestiture pursuant to § 76.501(b)(2) of the Rules. An updated list of cross-owned interests included herein as Appendix B indicates there are now 18 cross-owned situations of which 5 are still subject to divestiture under § 76.501(b)(2).

26. As in the non-egregious situations, we believe there may be circumstances which mitigate the need for divestiture even in the egregious cases. As we have said, divestiture carries with it heavy burdens which should not be imposed without due consideration of the circumstances and alternative remedies. On the other hand, in originally limiting divestiture to situations deemed egregious, we determined that these were the situations in which diversity was most likely to be absent. We stressed the fundamental principle that diversity could only be had by expression of multiple viewpoints from divergent and antagonistic sources, and concluded that diversity was severely threatened by co-ownership of the only video voices in a given community.

27. Given the fundamental issues involved and the potential adverse effects on the public and system and station owners, we believe that further inquiry and analysis in this matter is required before any further action can be taken. Accordingly, we will temporarily defer action regarding these egregious cases and the applicability of § 76.501(b)(2) of the Rules. We reach this conclusion, in part, in light of the pending Marsh petition which requests deletion of § 76.501 in its entirety.[25] We believe that the issues raised therein more adequately present the framework for resolution of this limited divestiture issue. Furthermore, we believe that deferral of action on these egregious cases works no undue hardship. Since those affected by § 76.501(b)(2) have been on notice, at least since 1975, that divestiture was required, the possible harm resulting from the delay until the Marsh proceeding is concluded, is outweighed by the public interest in thorough scrutiny of the rule prior to Commission action.

28. In light of the foregoing, we will abandon the proposal of our *Further Notice,* which would have required divestiture of all cross-owned cable system/broadcast station interests. For those cable system/broadcast station cross-interests considered non-egregious, we reaffirm our position in the *Second Report and Order* in Docket 20423 and allow such situations to continue. Regarding those situations defined by § 76.501(b)(2) as egregious, we defer comment and action until conclusion of the proceeding involving reevaluation of Section 76.501 of the Rules.

29. This action is taken pursuant to authority contained in Section 1, 2, 3, 4(i) and (j), 301, 303, 307, 309 and 403 of the Communications Act of 1934, as amended.[26]

30. Accordingly, it is ordered, That the proceeding in Docket 20423 is terminated.

31. It is further ordered That the effective date for divestiture specified in § 76.501 IS STAYED pending further notice, as indicated in Appendix C hereto. The note in § 76.501 which will stay the effective date for divestiture is added effective July 9, 1884.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—List of Commenters

National Association of Broadcasters
Office of Communication of United Church of Christ
York Community Access Television
Eastern Oklahoma Television Co., Inc.
WVEC Television, Inc.
Pembroke Cable Corp.
Southern Cable Vision, Inc.
WEHCO Video Inc. and KTAL-TV, Inc.
KSWO Television Co. and Lawton Cablevision, Inc.
Harron Communications Corp.
Glendive Broadcasting Corp.
Southern Oregon Broadcasting Company
Bonneville International Corporation
WCCO Television, Inc.
U.S. Department of Justice
Midcontinent Broadcasting Co.
Rock Island Broadcasting Co.
Fetzer Broadcasting Co. and Fetzer Television Corp.
Susquehanna Broadcasting Co.
Marsh Media, Ltd.
Chronicle Publishing Co.
Kid Broadcasting Corp.
North Platte Television, Inc.
Midessa Television Co., Inc.
Goodland Cable Co.
Hays Cablevision
CSIK, Inc.
William F. Duhamel and Helen S. Duhamel
National Citizens Committee for Broadcasting

Appendix B—Existing Cross-Owned Interests

Television station	Cable television system
1. KRON-TV, San Francisco, California.	Concord, CA. San Mateo County, CA. South San Francisco, CA.
2. WINK-TV, Fort Myers, Florida.	Fort Myers, FL.
3. KID-TV, Idaho Falls, Idaho; KIFI-TV, Idaho Falls, Idaho.	Idaho Falls, ID.
4. WHBF, Rock Island, Illinois.	Sterling, IL.
5. KLOE-TV, Goodland, Kansas [1].	Goodland, KS.
6. KAYS-TV, Hays, Kansas...	Hays, KS.
7. WKYH-TV, Hazard, Kentucky [1].	Hazard, KY.
8. KXGN-TV, Glendive, Montana [1].	Glendive, MT.
9. WKTV, Utica, New York	Utica, NY.
10. KFYR, Bismarck, North Dakota.	Bismarck, ND.
11. KTEN, Ada, Oklahoma [1] ...	Ada, OK.
12. KSWO-TV, Lawton, Oklahoma [1].	Lawton, OK.
13. KOTA-TV, Rapid City, South Dakota, KHSD-TV, Lead, South Dakota.	Hot Springs, SD; Spearfish, SD; Belle Fourche, SD; Sturgis, SD; Deadwood, SD.
14. KELO-TV, Sioux Falls, South Dakota.	Sioux Falls, SD.
KDLO-TV, Florence, South Dakota.	Aberdeen, SD; Huron, SD; Redfield, SD; Webster, SD.
KPLO-TV, Reliance, South Dakota.	Miller, SD; Pierre, SD; Winner, SD.
15. KVII-TV, Amarillo, Texas...	Amarillo, TX.
16. KMID-TV, Midland, Texas.	Odessa, TX.
17. KTAL-TV, Texarkana, Texas.	Hope, AR; Prescott, AR; Longview, TX.
18. KSL-TV, Salt Lake City, Utah.	Logan, UT.

[1] Subject to divestiture under existing rules.

[24] *See* note 1, *supra.*

[25] *See* para. 6, *supra.* If after careful review of the Marsh petition it is determined not to commence the requested proceeding, a date will by established for full compliance with the requirements of § 76.501.

[26] Although Section 601(2) of the Regulatory Flexbility Act of 1980 (RFA) (P.L. 96-354) applies to rules adopted pursuant to Section 553 of the Administrative Procedure Act, the RFA is inapplicable where, as here, the underlying Notice of Proposed Rule Making was adopted prior to January 1, 1981. 5 U.S.C. 601 note (1980 Supp.).

Appendix C

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 76.501 [Amended]

In § 76.501 a Note is added at the end as follows:

* * * * *

Note.—The effective date for divestiture specified in § 76.501(b)(2) is hereby suspended pending further Commission rulemaking action regarding common ownership of co-located cable television systems and television broadcast stations.

Dissenting Statement of Commissioner Henry M. Rivera

Re: Divestiture of Cable-Broadcast Television Cross-Interests in Existence on July 1, 1970.

Diversification of control over local mass communications media to promote ideological and economic diversity is among the most sacrosanct of this Commission's ownership policies.[1] It was in furtherance of this policy that the Commission, in 1970, ordered the divestiture of cross-owned cable-broadcast television combinations.[2] This decision, by further postponing the divestiture of "egregious" cable-broadcast television combinations, effectively marks a notable and unwarranted departure from that policy. Although the question of whether to order dissolution of "non-egregious" combinations is somewhat closer, I am persuaded that these combinations should also be subject to a divestiture requirement. Therefore, I must dissent to this *Third Report and Order* in its entirety.

With regard to egregious combinations, continued deferral of divestiture pending further inquiry is manifestly incorrect. In the 14 years and several public inquiries since the FCC first ordered the dissolution of these combinations, there has never been any question, until now, that such action was necessary to protect the public interest. In 1970, the Commission determined that where the same entity owned the only cable system and the only television station in a community, the public's interest in diverse programming could not be fully protected absent divestiture.[3] In 1975, the FCC rearffirmed this belief, declaring: "[T]here are certain situations . . . in which the importance of providing a second video voice attuned to and covering local issues outweighs the private equities and public dislocations brought about by a divestitute requirement."[4] While acknowledging the harshness of this course of action, the Commission found intolerable situations in which one entity had a "vital monopoly over local video expression."[5] In 1980, when the Commission proposed a broader divestiture rule,[6] the need to dissolve egregious combinations was so well-established that the issue was not even discussed.

The majority cites no change in circumstances or philosophy warranting reexamination of the FCC's prior determination regarding egregious combinations. Nevertheless, citing unidentified "fundamental issues," it determines that further inquiry is needed before final action can be taken. After 14 years of inquiry it is unclear what yet additional contemplation could offer, short of a newfound conviction that the cable-broadcast cross-ownership rule itself is no longer necessary or desirable—a conviction disavowed by the majority at the meeting during which this item was adopted.

Similarly unpersuasive is the claim that this issue would be productively considered in the framework of the rulemaking petition filed by March Media. Again, unless the majority questions the underlying cross-ownership rule, there is no reason to delay final action until Marsh Media's petition is considered. Furthermore, to function effectively and to maintain public credibility, this agency must enforce its rules until they are repealed, or until a sufficient case for stay or waiver is made. No such showing has been made here. The mere pendency of a rulemaking petition offers little, if any, legitimate reason to suspend the effective date of § 76.501(b)(2) once again. The almost unprecedented footdragging evidenced by this new delay can only raise questions about the Commission's dedication to local market diversity, especially when the majority's assessment of the harm resulting from further delay conspicuously omits any consideration of the continuing harm to diversity of opinion in the affected markets. *See Third Report and Order* at para. 27.

With regard to the issue of whether non-egregious cable-broadcast television cross-interests should be divested, the competing arguments are closer. In the final analysis, however, I am convinced that a general divestiture rule is appropriate. A cable system owner wields editorial control over not one, not two, but numerous conduits of programming. Ownership of an over-the-air television station in the same geographic market by the same entity places yet another video outlet—a potential competitor in the economic marketplace and the marketplace of ideas—into its hands. Such consolidation of video voices plainly undermines our goal of maximum diversity of program and service viewpoints to a far greater extent than that posed by a newspaper-broadcast cross-interest and, thus, is sufficiently distinct to warrant a more stringent administrative response than that produced in Docket 18110.[7]

The majority's decision to grandfather non-egregious combinations follows the aforementioned newspaper-broadcast model. The majority now rejects the Commission's tentative conclusion in 1980 that the "inherent conflict" posed by cable and broadcast television cross-ownership calls for broader divestiture than that ordered in the newspaper-broadcast setting. The majority maintains that, if anything, a narrower rule is appropriate because cable systems do not approach newspapers or broadcasters as "opinion molders".[8] The majority further reasons that since the list of cross-owned systems is short, the impact of these combinations on diversity is *de minimis;*[9] that specific factors counsel against divestiture of these combinations in any event;[10] and, that no one residing in the affected communities has ever complained about the lack of diversity.[11]

While I agree that more compelling case must be made to require dissolution of these non-egregious combinations, the justification proffered in support of grandfathering is sadly deficient. Initially, I disagree that since the cable medium is less of an opinion molder than newspaper or broadcasters, the implications of cable-broadcast television combinations for local diversity of expression is less significant. Whether or not the assertion about the actual influence of cable is true, the Commission has long emphasized a medium's *potential* to influence public opinion in fashioning structural rules.[12] This emphasis is sound, for the actual influence of a given medium is hard to measure and can vary over time.[13]

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[1] *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 780 (1978); *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 394–95 (1965); *Multiple Ownership of Standard FM and Television Broadcast Stations*, 45 FCC 1476, 1476–77 (1964).

[2] *Second Report and Order in Docket 18397*, 23 FCC 2d 816, 820 (1970).

[3] *Id.*

[4] *Second Report and Order in Docket 20423*, 55 FCC 2d 540, 544 (1975).

[5] *Id.*

[6] *Further Notice of Proposed Rulemaking*, 81 FCC 2d 150 (1980).

[7] *See Multiple Ownership*, 50 FCC 2d 1046 (1975).

[8] *Third Report and Order*, para. 21.

[9] *Id.* at para 22.

[10] *Id.* at para 23.

[11] *Id.* at para 23.

[12] *See Second Report and Order in Docket 18397, supra*, 23 FCC 2d at 817; *Second Report and Order in Docket 20423*, 55 FCC 2d at 543.

[13] the majority's effort to downplay the significance of cable television as a media voice is curious, to say the least. The present Commission has relied heavily on the existence of the cable medium in many of its "unregulation" proceedings to support the proposition that the video marketplace is diversity rich and workably competitive. See *Deregulation of Commercial Television Service*, 94 FCC 2d 678 (1983); *Repeal of the National Multiple Ownership Rules*, Docket 83–1009, 48 FR 49438, Oct. 25, 1983; *Children's Television Programming and Advertising Practices*, Docket 19142, 49 FR 1704 (Jan. 12, 1984); *Repeal of the "Regional Concentration of Control" Provisions of the Multiple Ownership Rules*, Docket 84–19, 49 FR 19670 May 9, 1984). The majority cannot have it both ways. Either cable competes in the marketplace of ideas or it does not. If it does not (or is not a full-fledged competitor because of its lack of emphasis on local programming, as the majority maintains) then its existence cannot be appreciably relied upon—as it has been—to justify reduced broadcast regulation. The Commission's perception of the video marketplace may change over time, but that perception cannot change from rulemaking to rulemaking simply to suit the deregulatory whim of the moment.

Nor does the limited number of cross-owned situations at issue in this proceeding suggest that these situations should be permitted to continue. Every member of the public is entitled to the benefit of our diversification policies. If anything, the relatively limited dislocation that would be caused by divestiture of non-egregious combinations argues for, not against, such a requirement. There may indeed be factors that mitigate the need for divestiture in specific cases, but these factors should be considered in a waiver context, and not as a basis for rejecting a generic rule.[14] Pursuing a waiver approach would have signalled out commitment to economic and ideological competition in local markets, while allowing for relief where those objectives would not be compromised.

The majority's final argument—that divestiture should not be required absent evidence of abuse—is inconsistent with prior sound determinations by this agency that:

Diversity and its effects are * * * elusive concepts not easily defined, let alone measured, without making qualitative judgments objectionable on both policy and First Amendment grounds. [E]vidence of specific abuses by common owners is difficult to compile; the possible benefits of competition do not lend themselves to detailed forecasts."[15]

In conclusion, the decision to delay divestiture of egregious combinations once again is without rational foundation. The decision to grandfather non-egregious combinations, similarly, is not grounded in reasoned analysis. Divestiture is a harsh, but necessary, response in this case.[16]

Almost a decade ago, the Commission's game plan on cable-broadcast television divestiture was characterized as a "fox trot"—one step forward, one step to the side and one to the rear.[17] With this action, we have left the dance floor altogether.

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BILLING CODE 6712-01-M

[14] As the Commission has previously noted: [T]hose arguments intended to show that the available competition media or other circumstances in a particular community offer such diversity that they are at least equivalent to another television station. * * * belong in a waiver context and not here. While the individual facts may present a convincing case in a waiver context that divestiture should not be required, we are not convinced that they suggest the need to revise a rule which is intended to be of general applicability. *Memorandum Opinion and Order*, 58 FCC 2d 596, 599 (1976).

[15] *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 776-77 (1978).

[16] Of course, I would be prepared to approve waiver requests upon proper individualized showings.

[17] *Second Report and Order in Docket 20423*, 55 FCC 2d at 549 (Dissenting Statement of Commissioner Glen O. Robinson).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 31220-245]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing the mid-Atlantic surf clam fishery. The action is necessary because harvest from the fishery will exceed the quarterly quota for the second calendar quarter. The intended effect of the closure is to prevent harvests from exceeding the annual quota for the fishery.

EFFECTIVE DATES: From 0001 hours Eastern Daylight Time (e.d.t.) June 24, 1984, through 2400 hours e.d.t. July 7, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Surf Clam Management Coordinator, 617-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: The regulations implementing Amendment 3 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries were published on January 29, 1982 (47 FR 4268). The regulations contain at § 652.22(d) a provision requiring that if the Director, Northeast Region, NMFS (Regional Director), determines (based on logbook reports, vessel inspections, or other information) that the quota for surf clams or any time period will be exceeded, the Secretary of Commerce will publish a notice in the **Federal Register** stating the determination and stating a date and time for closure of the fishery.

Harvest of surf clams in the Mid-Atlantic Area has been significantly higher during 1984 than in previous years. This is probably because significant numbers of surf clams from strong 1976 and 1977 year classes are now reaching the minimum legal size for harvest, thus elevating the catch per hour fished. On February 26, 1984 (49 FR 6498); the Regional Director reduced allowable fishing time from 24 hours to 12 hours per week in an attempt to control harvest rates. Despite this reduction, harvest rates continue to exceed the quarterly quota guidelines. The Regional Director has determined that the Mid-Atlantic Area surf clam quota for the second calendar quarter of 1984 (April 1–June 30) will be reached on or about June 10, 1984. Following consultation with industry spokespersons and the Mid-Atlantic Fishery Management Council, the Regional Director has determined that the fishery in the Mid-Atlantic Area should be closed for the period from June 24, 1984, through July 7, 1984.

The fishery will close at 0001 hours e.d.t. on June 24, 1984 and will remain closed until 2400 hours e.d.t. on July 7, 1984. This closure applies only to surf clams taken in the fishery conservation zone in the Mid-Atlantic Area.

When the fishery reopens at 0001 hours e.d.t. on July 8, 1984, the Regional Director will evaluate the status of the fishery and quotas. If additional closure periods are required to bring harvests down to the level provided by the quotas, they will be considered later in the third calendar quarter (July 1–September 30).

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries.

Dated: June 1, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-15127 Filed 6-5-84; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 611, 672, and 675

[Docket No. 31230-251]

Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) under provisions of the fishery management plans (FMPs) for the Groundfish of the Gulf of Alaska and for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Groundfish are apportioned according to the regulations implementing those FMPs. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, Alaska Region, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

The total allowable catches (TACs) for various groundfish species are established by the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and optimum yields (OYs) are established by the FMP for the Gulf of Alaska Groundfish Fishery. These FMPs were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by rules appearing at 50 CFR 611.92 and 611.93, and at 50 CFR Parts 672 and 675. The TACs and OYs are apportioned initially among DAH, reserve, and TALFF. Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.92(c), 611.93[(b), 672.20(c), and 675.20(b). In addition, surplus amounts of both components of DAH [DAP (domestic processed fish) and JVP (joint-venture processed fish)] may be apportioned to TALFF during the fishing year under those same regulations.

The initial DAPs and JVPs for 1984 were based on the projected needs of the U.S. industry, as assessed by a survey sent by the Director, Alaska Region, NMFS (Regional Director) to fishermen and processors in September 1983. To consider changes in the extent to which the U.S. industry will harvest and process groundfish, the Regional Director resurveyed the industry (including new participants) in March 1984. The results of the March survey indicate that, with several exceptions discussed below, the initial DAPs and JVPs are adequate for 1984.

Because it is too early in the year to determine exactly what amounts of DAH, if any, will prove excess to the needs of U.S. fishermen, it is not practicable to reapportion any DAH to TALFF at this time. Such reapportionment, along with any reserves not released by this action, will be considered at a later date.

This action announces apportionments of reserve amounts of groundfish from the Bering Sea and the Aleutian Islands area and the Gulf of Alaska that became available for DAH and TALFF in April 1984.

1. Bering Sea and Aleutian Islands Area (BSA)

Reserves apportioned to DAH: Survey returns indicate that joint ventures intend to take a greater amount of pollock in the Bering Sea than previously estimated. The initial JVP of pollock is supplemented by 20,000 mt of reserve. Similarly, the initial JVP for rockfish in the Bering Sea is supplemented by 235 mt of reserve, and the initial JVP for sablefish in the Aleutian Islands by 180 mt of reserve. Joint-venture fisheries in the BSA have experienced a higher bycatch of turbots than was anticipated. The initial JVP of turbots is supplemented by 1,000 mt of reserve.

Both shoreside and joint-venture companies have expressed the desire to catch Pacific ocean perch (POP) in the Bering Sea in excess of the initial DAP and JVP, which would require that the initial TAC for that area be increased. The Council set the initial Bering Sea TAC of POP at 1,780 mt to account for DAH needs (as initially estimated) and to provide for incidental catch by the foreign groundfish fishery. That TAC level was not expected to be detrimental to the resource. The Secretary of Commerce (Secretary) has now determined in accordance with 50 CFR 675.20(b)(1)(i) that apportioning an additional amount of reserve to the Bering Sea TAC of POP could jeopardize the Council's intent to rebuild the Bering Sea POP stocks and adversely affect their well being.

Joint ventures have indicated an increased interest in POP in the Aleutian Islands area. The Council had set the initial TAC of POP in that area at 25 percent of the equilibrium yield (EY), or 2,700 mt, to allow more rapid rebuilding of the stock to accommodate future development of a domestic fishery. (EY is defined and discussed in the FMP.) The initial TAC was increased to 2,945 mt to allow for a foreign bycatch. Because of the present interest in developing a domestic fishery, the Secretary considers a small supplement to that TAC appropriate. The Aleutian Islands JVP of POP therefore is supplemented by 1,635 mt of reserve, thus effectively increasing the TAC to 4,580 mt (the sum of the initial TAC plus the amounts taken from the reserve). This TAC is less than half of the EY and does not adversely affect the conservation of the Aleutian Islands POP stocks or the Council's intent to rebuild those stocks.

Reserves retained: The pooled total reserve established January 1, 1984 (49 FR 1063, January 9, 1984) for the BSA was 291,990 mt. After supplementation of DAH, the remaining reserve is 274,940 mt. To provide for unanticipated increases in DAH and bycatch needs for foreign fisheries during the remainder of 1984, 25 percent of this reserve (68,735 mt) is retained.

Reserves apportioned to TALFF: From the remaining reserves, a total of 206,205 mt are apportioned to TALFF. For apportionment by species and areas, see Table 1.

TABLE 1.—SUMMARY TABLE OF APPORTIONMENTS OF RESERVES TO TALFF (METRIC TONS)

Bering Sea and Aleutians:	
Pollock:	
Bering Sea	120,895
Aleutians	11,250
Yellowfin sole	26,539
Turbots	5,705
Other flatfish	12,540
Pacific cod	23,625
Pacific ocean perch:	
Bering Sea	0
Aleutians	0
Other rockfish:	
Bering Sea	0
Aleutians	0
Sablefish:	
Bering Sea	150
Aleutians	0
Atka mackerel	0
Squid	1,001
Other species	4,500
Total	206,205
Gulf of Alaska:	
Pollock:	
Western/Central	64,000
Eastern	2,656
Pacific cod:	
Western	0
Central	2,966
Eastern	1,584
Flounders:	
Western	0
Central	0
Eastern	0
Pacific ocean perch:	
Western	0
Central	0
Eastern	0
Other rockfish	0
Sablefish:	
Western	78
Central	0
Eastern	0
Atka mackerel:	
Western	0
Central	3,334
Eastern	510
Squid	800
Thornyhead rockfish	600
Other species	1,995
Total	78,523

2. Gulf of Alaska

Reserves apportioned to DAH: Survey returns indicate an increased interest by joint-venture fisheries in Pacific cod, flounders, and Atka mackerel in the Western Area. In this area, the initial JVP of Pacific cod (250 mt) is supplemented by the entire 3,312-mt reserve, the initial flounders JVP (10 mt) by the entire 2,080-mt reserve, and the initial Atka mackerel JVP (400 mt) by 749 mt of the reserve. Joint-venture fisheries have experienced a higher bycatch of "other species" than

anticipated; therefore, the initial JVP of "other species" is supplemented by 1,000 mt of the reserve. Survey returns and reports of catches to date indicate an increased interest in flounders by shore-based processors in the Central and Eastern Areas. The DAP of flounders in the Central Area is supplemented by the entire reserve, 2,940 mt. For the same reason, the DAP of other rockfish is supplemented by the entire reserve of 1,520 mt.

Reserves retained: In anticipation of increased fishing effort later, the reserve of flounders in the Eastern Area is retained. Part of the reserve of sablefish in the Western Area and the entire reserve of sablefish in both the Central Area and West Yakutat District are retained to supplement DAP at a later date because survey returns indicate increased interest by U.S. processors in purchasing sablefish in the Western and Central Areas and the West Yakutat District of the Eastern Area. At the request of the Council, all reserves of POP in the Western, Central, and Eastern Gulf Areas are retained, because recent biological evidence indicates that the OYs for POP in the Western and Central Gulf Areas may be too high. For all species and areas not previously discussed, 20 percent of each reserve is retained to provide for unanticipated increases in DAH needs.

Reserves apportioned to TALFF: All reserves not apportioned to DAH or retained as discussed above are apportioned to TALFF. For apportionment by species and areas, see Table 1.

Tables 2 and 3 show the history and present status of DAP, JVP, reserves, and TALFF of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska

TABLE 2.—1984 BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

		Initial	Changes January 1	Changes April	Revised
Pollock	DAP	18,200			18,200
Bering Sea	JVP	253,000		+20,000	273,000
TAC=1,200,000	RES	180,000		−140,895	39,105
	TALFF	748,800		+120,895	869,695
Pollock	DAP	500			500
Aleutians	JVP	3,000			3,000
TAC=100,000	RES	15,000			15,000
	TALFF	81,500		+11,250	92,750
Yellowfin sole	DAP	1,360			1,360
TAC=230,000	JVP	36,500			36,500
	RES	34,500		−26,539	7,961
	TALFF	157,640		+26,539	184,179
Turbots	DAP	20			20
TAC=59,610	JVP	100		+1,000	1,100
	RES	8,940		−6,705	2,235
	TALFF	50,550		+5,705	56,255
Flatfish	DAP	1,360			1,360
TAC=111,490	JVP	22,000			22,000
	RES	16,720		−12,540	4,180
	TALFF	71,410		+12,540	83,950
Pacific cod	DAP	104,400			104,400
TAC=210,000	JVP	27,200			27,200
	RES	31,500		−23,625	7,875
	TALFF	46,900		+23,625	70,525
POP	DAP	550			550
Bering Sea	JVP	150			150
TAC=1,780	RES	270			270
	TALFF	810			810
POP	DAP	550			550
Aleutians	JVP	1,745		+1,635	3,380
TAC=2,700	RES	405	−650	−1,635	1,880
	TALFF	0	+650		650
Other Rockfish	DAP	50			50
Bering Sea	JVP	20		+235	255
TAC=1,550	RES	235		−235	0
	TALFF	1,245			1,245
Other Rockfish	DAP	50			50
Aleutians	JVP	4,000			4,000
TAC=5,000	RES	825			825
	TALFF	625			625
Sablefish	DAP	2,540			2,540
Bering Sea	JVP	100			100
TAC=3,740	RES	560	−360	−150	50
	TALFF	540	+360	+150	1,050
Sablefish	DAP	50			50
Aleutians	JVP	100			100
TAC=1,600	RES	240		−180	60
	TALFF	1,210			1,390
Atka Mackerel	DAP	230			230
TAC=23,130	JVP	19,430			19,430
	RES	3,470	−1,000		2,470
	TALFF	0	+1,000		1,000
Squid	DAP	20			20
TAC=8,900	JVP	20			20
	RES	1,335		−1,001	334
	TALFF	7,525		+1,001	8,526
Other species	DAP	3,000			3,000
TAC=40,000	JVP	2,000			2,000
	RES	6,000		−4,500	1,500
	TALFF	29,000		+4,500	33,500
Total	DAP	132,880			132,880
TAC=2,000,000	JVP	369,365		+26,050	392,415
	RES	300,000	−2,010	−229,255	68,735
	TALFF	1,197,755	+2,010	+206,205	1,405,970

NOTE.—Species amounts indicated as "RES" are for accounting purposes and equal TAC−[DAP+JVP+TALFF].

TABLE 3.—1984 GULF OF ALASKA REAPPORTIONMENTS OF OY

		Initial	Changes April	Revised
Pollock	DAP	9,000		9,000
West/Central	JVP	210,300		210,300
OY = 400,000	RES	80,000	−64,000	16,000
	TALFF	100,700	+64,000	164,700
Pollock	DAP	300		300
Eastern	JVP	0		0
OY = 16,600	RES	3,320	−2,656	664
	TALFF	12,980	+2,656	15,636
Pacific cod	DAP	500		500
Western	JVP	250	+3,312	3,562
OY = 16,560	RES	3,312	−3,312	0
	TALFF	12,498		12,498
Pacific cod	DAP	11,700		11,700
Central	JVP	14,600		14,600
OY = 33,540	RES	3,708	−2,966	742
	TALFF	3,532	+2,966	6,498
Pacific cod	DAP	120		120
Eastern	JVP	0		0
OY = 9,900	RES	1,980	−1,584	396
	TALFF	7,800	+1,584	9,384
Flounders	DAP	0		0
Western	JVP	10	+2,080	2,090
OY = 10,400	RES	2,080	−2,080	0
	TALFF	8,310		8,310
Flounders	DAP	100	+2,940	3,040
Central	JVP	8,620		8,620
OY = 14,700	RES	2,940	−2,940	0
	TALFF	3,040		3,040
Flounders	DAP	300		300
Eastern	JVP	0		0
OY = 8,400	RES	1,680		1,680
	TALFF	6,420		6,420
POP	DAP	0		0
Western	JVP	1,770		1,770
OY = 2,700	RES	540		540
	TALFF	390		390
POP	DAP	620		620
Central	JVP	2,000		2,000
OY = 7,900	RES	1,580		1,580
	TALFF	3,700		3,700
POP	DAP	460		460
Eastern	JVP	0		0
OY = 875	RES	175		175
	TALFF	240		240
Other Rockfish	DAP	395	+1,520	1,915
OY = 7,600	JVP	500		500
	RES	1,520	−1,520	0
	TALFF	5,185		5,185
Sablefish	DAP	100		100
Western	JVP	200		200
OY = 1,670	RES	334	−78	256
	TALFF	1,036	+78	1,114
Sablefish	DAP	1,360		1,360
Central	JVP	290		290
OY = 3,060	RES	612		612
	TALFF	798		798
Sablefish	DAP	1,344		1,344
W. Yakutat	JVP	0		0
OY = 1,680	RES	296		296
	TALFF	40		40

TABLE 3.—1984 GULF OF ALASKA REAPPORTIONMENTS OF OY—Continued

		Initial	Changes April	Revised
Atka Mackerel	DAP	400		400
Western	JVP	400	+749	1,149
OY = 4,678	RES	936	−749	187
	TALFF	2,942		2,942
Atka Mackerel	DAP	0		0
Central	JVP	1,500		1,500
OY = 20,836	RES	4,167	−3,334	833
	TALFF	15,169	+3,334	18,503
Atka Mackerel	DAP	0		0
Eastern	JVP	0		0
OY = 3,186	RES	637	−510	127
	TALFF	2,549	+510	3,059
Squid	DAP	100		100
OY = 5,000	JVP	10		10
	RES	1,000	−800	200
	TALFF	3,890	+800	4,690
Thornyheads	DAP	150		150
OY = 3,750	JVP	50		50
	RES	750	−600	150
	TALFF	2,800	+600	3,400
Other Species	DAP	100		100
OY = 18,718	JVP	400	+1,000	1,400
	RES	3,744	−2,995	749
	TALFF	14,474	+1,995	16,469
Total	DAP	27,049	+4,460	31,509
OY = 591,753	JVP	240,900	+7,141	248,041
	RES	115,311	−90,124	25,187
	TALFF	208,493	+78,523	287,016

Comments and Responses

In accordance with 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection for a sufficient period to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit timely comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. One comment was received during the comment period.

Comment: Available reserve amounts of Pacific cod in the Bering Sea and in the Western and Central Areas of the Gulf of Alaska, and all reserve and certain DAH amounts of sablefish in the Bering Sea are excessive to the needs of U.S. fishermen and should be apportioned to TALFF.

Response: In the Bering Sea, 23,625 mt of Pacific cod and 150 mt of sablefish are apportioned to TALFF. Eighty percent of the reserve of Pacific cod in the Central and Eastern Regulatory Areas of the Gulf of Alaska is apportioned to TALFF. In the Western Regulatory Area, the unanticipated increase in expected harvest of Pacific cod by joint ventures requires the entire reserve to supplement JVP. Because it is not yet clear what amounts will prove excess to the needs of U.S. fishermen, reapportionment of DAH amounts will be considered at a later date.

Classification

This action is taken under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), and complies with Executive Order 12291.

In view of the prior notice provided in the authorizing regulations regarding the dates after which apportionment of reserves and reassessment of DAH are to occur, together with the need to avoid disruption of U.S. and foreign fisheries and to afford a reasonable opportunity to achieve OY, the Agency has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: June 1, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-15202 Filed 6-1-84; 5:08 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 110
Wednesday, June 6, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1900, 1901, 1951, and 1955

Property Management

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its existing regulations regarding property management. This revision is necessary because the existing regulations reflect deficiencies as evidenced by many requests from field offices for guidance and assistance. The intended effect of this revision is to eliminate known deficiencies and to update and expand authorities and procedures. Terminology will be made uniform and will be made to conform to other published regulations; monetary authority for program decisions and approvals will be made to reflect price and mortgage escalations which have occurred since the existing regulations were published; and material in the proposed Subparts will be organized and clarified to provide concise guidelines to field personnel in handling the acquisition, management and disposal of property.

DATES: Comments must be submitted on or before August 6, 1984.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250.

All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

The collection of information requirements contained in this rule have been submitted to OMB for review under Section 3504(b) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Farmers Home Administration, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT:

For Subparts A and B of Part 1955, contact Frances B. Calhoun, Senior Realty Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, Room 5309, South Agriculture Building, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250, Telephone: (202) 382–1452.

For *Subpart C of Part 1955,* contact Edward W. Nidever, Senior Realty Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, Room 5309, South Agriculture Building, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250. Telephone: (202) 382–1452.

SUPPLEMENTARY INFORMATION: This proposed rulemaking has been reviewed under USDA procedure established in Secretary's Memorandum No. 1512–1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Some of the FmHA programs and projects which are affected by these regulations are subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities." These programs include Multiple Family Housing and Community and Business programs.

Catalog of Federal Domestic Assistance Titles and Numbers:

10.404 Emergency Loans
10.405 Farm Labor Housing Loan and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-income Housing Repair Loan and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans

Subpart A of Part 1955 contains policies and procedures for liquidating loans secured by real estate by voluntary conveyance and foreclosure. It has been reorganized to place the required actions in chronological sequence. The majority of these liquidations result in Government acquisition of the property. Reporting and record keeping procedures have been revised and clarified.

Primary changes in Subpart A of Part 1955 are:

(a) Sets monetary guidelines for settling junior liens in voluntary conveyance cases.

(b) Sets a monetary limit on a fee to a Trustee in Bankruptcy for a deed to security property.

(c) Provides new authority for acquisition of property from General Services Administration (GSA) for sale or lease to persons with low or moderate income.

(d) Authorizes the District Director to approve foreclosure and accelerate accounts of Farmers Programs and Single Family Housing borrowers.

(e) Provide that foreclosure proceedings will be held in abeyance until appeals are concluded or the time for appeal or review has elapsed.

(f) Provides guidance on cases where the borrower files a petition in bankruptcy after acceleration of the account.

(g) Clarifies calculation of the Government's bid and bidding procedures.

(h) Provides that all inventory accounts will be established at market value of the property as of the date acquired.

(i) Establishes new policy for satisfying Single-Family Housing accounts after foreclosure unless a judgment will be pursued against the borrower.

(j) Establishes authority for the Administrator, FmHA, to make exception to any provision of this Subpart which is not inconsistent with the authorizing statute.

Subpart B of Part 1955 prescribes policies and procedures for effective management of inventory property as well as security property of which FmHA has taken custody after abandonment by the borrower.

Primary changes in Subpart B of Part 1955 are:

(a) Clarifies responsibilities and actions necessary in taking into custody security real property which is abandoned by the borrower; allows the County Supervisor to take possession of abandoned real property securing loans to individuals after properly documenting the facts without the State Director's authorization.

(b) Clarifies policy on limitations on repairs to custodial property.

(c) Provides that eviction of persons from inventory property may be accomplished through State courts where State laws permit and authorization is obtained from the Regional Attorney of the Office of the General Counsel, USDA.

(d) Provides guidance and sets forth authority of various employees in determining suitability of property for program purposes.

(e) Establishes program authority for the County Supervisor and District Director in an aggregate amount of $15,000 per property for expenditures necessary to secure, maintain and repair inventory property.

(f) Expands on methods of management which may be used in connection with custodial and inventory property and outlines authority of various employees for entering into management contracts.

(g) Provides that inventory property may be leased with the option to purchase given.

(h) Clarifies policy on security deposits and provides guidance on handling and return.

(i) Permits the Administrator, FmHA, to make exception to any provision of this Subpart which is not inconsistent with the authorizing statute.

Subpart C of Part 1955 covers disposal of inventory property. The revisions clarify and reorganize existing procedures as well as provide for increased use of private-sector assistance. The revisions should substantially reduce the time inventory property is held by expanding the disposal authorities.

Primary changes in Subpart C of Part 1955 are:

(a) Specifically defines responsibilities.

(b) Requires the repair of single family housing property prior to marketing except under special circumstances.

(c) Provides program authority to dispose of all categories of property by sealed bid or auction.

(d) provides time guidelines for the disposal of both real and chattel inventory property.

(e) Provides methods to cure deficiencies requiring decent, safe and sanitary, restrictive deed clauses prior to closing.

(f) Provides authority for use of balloon-type loans to ineligible purchases of real property if required by economic conditions.

(g) Authorizes payment of discount points to facilitate sale of inventory real property.

(h) Provides alternate sales methods for chattel property.

(i) Authorizes use of private sector (contractor) specification writers, inspectors, appraisers, business brokers, exclusive real estate brokers, and auctioneers to expedite the sale of all categories of inventory property.

(j) Redefines circumstances requiring use of an Affirmative Fair Housing Marketing Plan.

(k) Addresses use of Environmental Assessments (EA) and Environmental Impact Statements (EIS) when disposing of property having controversial environmental implications or being located in areas having special characteristics.

(l) Requires the Government to provide certain certifications upon sale of inventory real property consistent with private sector practice.

(m) Authorizes, in special cases, disposal procedures through the Department of Housing and Urban Development (HUD).

(n) Provides for land acquisition necessary to effect a real property sale.

(o) Emphasizes and provides authority for advertising.

(p) Provides for administrative price reductions for certain real property in order to conform to changing market conditions and to expedite sales.

The changes in Subpart A of Part 1955 require conforming changes in other FmHA regulations to reflect the authority being given to District Directors to approve foreclosure and accelerate accounts for Farmer Programs and Single Family Housing loans. The other FmHA regulations to be changed are: Subparts A and B of Part 1900 and Subparts F and G of Part 1951 of this Chapter. Authorities for sale or disposition of government inventory property outlined in Subpart C of Part 1955 also require amendment to Subpart A of Part 1900 of this Chapter.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Low and moderate income housing loans—Servicing, Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

Therefore, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1900—GENERAL

Subpart A—Delegations of Authority

1. Section 1900.2 (e) is revised to read as follows:

§ 1900.2 National office staff and State Directors.

* * * * *

(e) Sell or otherwise dispose of real or chattel property or interests therein and to execute and deliver bills of sale or other instruments to effect such sale and disposition; and is personally authorized to execute and deliver quitclaim deeds, easements, and right-of way conveyances.

* * * * *

2. Section 1900.3 is revised to read as follows:

§ 1900.3 State, District and County Office employees.

The following officials and employees of the Farmers Home Administration, in accordance with applicable laws, and the regulations implementing these laws, for and on behalf of, and in the name of the United States of America or the Farmers Home Administration, are also severally authorized within the area of their respective jurisdictions to perform the acts specified in paragraph (i) and paragraphs (k) through (r), or § 1900.2; and within their loan approval authority to sell or otherwise dispose of real or chattel property or interests therein and to execute and deliver bills of sale or other instruments to effect such sale or disposition: Chief, Farmer Programs/Specialist; Chief, Rural Housing/Specialist; Chief, Community Programs/Specialist; Chief Business and Industry/Specialist; Chief, Community and Business Programs/Specialist; each District Director, Assistant District Director, Loan Specialist General, County (including Parish) Supervisor, Emergency Loan Supervisor, Assistant Emergency Loan Supervisor, or other supervisor or asistant supervisor; and in the absence or disability of any such official or employee, the person acting in the postion.

Subpart B—Farmers Hone Administration Appeal Procedure

§1900.56 [Amended]

3. Section 1900.56(a)(4) is amended in line 5 by changing "State Director" to "approval official."

4. The table in Exhibit D to Subpart B is revised to read as follows:

Exhibit D to Subpart B

HEARING/REVIEW OFFICER DESIGNATIONS

Decision maker or decision	Hearing officer	Review officer
County Supervisor	District Director or person designated by State Director	State Director or designee (who has not been significantly involved with the case).
County Committee	State Director or designee	Deputy Administrator, Program Operations or designee.
District Director	State Director or designee	Deputy Administrator, Program Operations or designee.
State Director	Deputy Administrator, Program Operations or designee	(No review.)
Division Director or Assistant Administrator	Deputy Administrator, Program Operations or designee.	(No review.)
Deputy or Associate Administrator	Administrator or designee	(No review.)
Decision to foreclose Chattels	District Director	State Director or designee.
Decision to foreclose Real Estate:		
For accounts serviced in the County Office	State Director or designee	Deputy Administrator, Program Operations or designee.
For accounts serviced in the District Office	Deputy Administrator, Program Operations or designee	No review.

* * * * * * *

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart E—Civil Rights Compliance Requirements

5. Section 1901.203(c)(2)(ii) is revised to read as follows:

§ 1901.203 Title VIII of the Civil Rights Act of 1968.

* * * * * *

(c) * * *

(2) * * *

(ii) An Affirmative Fair Housing Marketing Plan is required to be prepared and submitted to FmHA by the contractor when:

(A) A real estate broker is offering 5 or more single-family dwellings located in the same subdivision for sale under an exclusive listing contract with FmHA.

(B) An auctioneer under contract with FmHA is offering 5 or more single-family dwellings located in the same subdivision for sale by public auction.

(C) A contractor under a contract with FmHA is managing a multiple-family housing project or 5 or more single-family dwellings located in the same subdivision.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

6. In § 1951.262, paragraphs (a) (1) and (2) and paragraph (b) are revised to read as follows:

§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

(a) * * *

(1) Provide information following receipt of both FmHA Guide Letters No. 1951–1 and 1951–2, or letters of similar format, such borrowers will not be asked to graduate. They are, at that point, in default of their security instruments, which require the borrower to comply with all future FmHA regulations not inconsistent with the security instruments. The servicing official will, based on the borrower's failure to supply information in accordance with § 1951.261(e) of this Subpart, prepare the required documents recommending legal action and submit them together with the borrower's case file to the official authorized to approve foreclosure of the loan type involved with a written report outlining credit sources contacted by FmHA and the borrower, the reasons given by the borrower for failure to graduate, action taken by FmHA to verify the availability of credit, and the borrower's available financial resources along with any data pertinent to the case. The approval official may, with the concurrence of the Regional Attorney, accelerate the account based on the borrower's failure to perform as required by this Subpart and the loan and security instruments.

(2) Apply for or accept other credit following receipt of both FmHA Guide Letters No. 1951–5 and 1951–6, or letters of similar format, such borrowers will not be given further notice to graduate but at that point are in default under the graduation requirement of their security instruments. The servicing official will prepare the required documents to recommend legal action and submit them to the approval official as outlined in paragraph (a)(1) of this section.

(b) The official authorized to approve foreclosure will review those cases submitted to his/her office and determine what action must be taken on the basis of the FmHA notes, security instruments, and/or loan agreements signed by the borrower and the facts and recommendations provided by the servicing official.

(1) If the approval official determines the borrower is unable to graduate, the graduation request may be withdrawn. The approval official will request the servicing official to notify the borrower and withdraw the graduation request in

accordance with §1951.261(g)(5)(i) of this Subpart.

(2) If the approval official determines the borrower is able to graduate he/she will accelerate the borrower's account(s) in accordance with § 1955.15 of Subpart A of Part 1955 of this Chapter. If the borrower's account(s) are accelerated, the borrower will be given the right to appeal the decision in accordance with Subpart B of Part 1900 of this Chapter. The advice of the Regional Attorney is required before accelerating the account.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

§ 1951.312 [Amended]

7. Section 1951.312 (e)(4) is amended by changing "State Director" to "District Director" Wherever it appears and by removing in line 12 the sentence beginning with "The County Supervisor may seek* * *."

8. Part 1955 is revised to read as follows:

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

Sec.
1955.1 Purpose.
1955.2 Policy.
1955.3 Definitions.
1955.4 Redelegation of authority.
1955.5 General actions.
1955.6–1955.9 [Reserved]
1955.10 Voluntary conveyance of real estate by the borrower to the Government.
1955.11 Conveyance of property to FmHA by trustee in bankruptcy.
1955.12 Conveyance of real property to FmHA by the General Services Administration (GSA).
1955.13 Acquisition of property at tax sale or bankruptcy sale.
1955.14 [Reserved]
1955.15 Foreclosure by the Government of loans secured by real estate.
1955.16 Actions required after voluntary conveyance or foreclosure is completed.
1955.17 Exception authority.
1955.18 State supplements.
1955.19 [Reserved]
1955.20 Acquisition of chattel property.
1955.21–1955.50 [Reserved]

Subpart B—Management of Property

1955.51 Purpose.
1955.52 Policy.
1955.53 Definitions.
1955.54 Redelegation of authority.
1955.55 Taking abandoned real property into custody and related actions.
1955.56–1955.59 [Reserved]
1955.60 Inventory real property subject to redemption.
1955.61 Eviction of persons occupying inventory real property.
1955.62 Removal and disposition of nonsecurity personal property from inventory real property.
1955.63 Suitability determination.
1955.64 Securing, maintaining, and repairing inventory real property.
1955.65 Management of inventory and/or custodial real property.
1955.66 Lease of real property.
1955.67 Payment of liens.
1955.68 Payment of taxes.
1955.69 Insurance.
1955.70 Inspection of property.
1955.71 Vandalism or theft.
1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).
1955.73 Exception authority.
1955.74 State supplements.
1955.75–1955.79 [Reserved]
1955.80 Management of inventory chattel property.
1955.81–1955.100 [Reserved]

Subpart C—Disposal of Inventory Property

Introduction

1955.101 Purpose.
1955.102 Policy.
1955.103 Definitions.
1955.104 Authorities and responsibilities.

Consolidated Farm and Rural Development Act (CONACT) Real Property

1955.105 Real property affected (CONACT).
1955.106 Sale of suitable property (CONACT).
1955.107 Sale of surplus property (CONACT).
1955.108 Processing and closing (CONACT).
1955.109 [Reserved]

Rural Housing (RH) Real Property

1955.110 Sale of real estate that secured Rural Housing loans (housing).
1955.111 Property repair (housing).
1955.112 Method of sale (housing).
1955.113 Sale price (housing).
1955.114 Sales steps for suitable property (housing).
1955.115 Sales steps for unsuitable property (housing).
1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).
1955.117 Processing credit sales to eligible applicants (housing).
1955.118 Processing sale to ineligible purchasers (housing).
1955.119 Payment of discount points (housing).
1955.120 [Reserved]

Chattel Property

1955.121 Sale of acquired chattels (chattel).
1955.122 Method of sale (chattel).
1955.123 Sale procedures (chattel).
1955.124 Sale with inventory real estate (chattel).
1955.125 [Reserved]

Use of Contractors to Dispose of Inventory Property

1955.126 Selection and use of contractors to dispose of inventory property.
1955.127 Specification writers and inspectors.
1955.128 Appraisers.
1955.129 Business brokers.
1955.130 Real estate brokers.
1955.131 Auctioneers.
1955.132 [Reserved]
1955.132 [Reserved]

General

1955.133 Nondiscrimination.
1955.134 Loss, damage, or existing defects in inventory real property.
1955.135 Taxes on inventory real property.
1955.136 Environmental Assessement (EA) and Environmental Impact Statement (EIS).
1955.137 Real property located in special areas or having special characteristics.
1955.138 Property subject to redemption rights.
1955.139 Disposition of real property rights.
1955.140 Sale in parcels.
1955.141 Transferring title.
1955.142 Reporting sale.
1955.143 Report on inventory property not sold.
1955.144 Disposal of surplus property to, through, or acquired from other agencies.
1955.145 Land acquisition to effect sale.
1955.146 Advertising.
1955.147 Sealed bid sales.
1955.148 Auction sales.
1955.149 State supplements.
1955.150 Exception authority.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisitions of Real and Chattel Property

§ 1955.1 Purpose.

This Subpart delegates authority and prescribes procedures for the liquidation of Farmers Home Administration (FmHA) loans identified in § 1955.3 (c) and (d) of this Subpart and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, and certain other actions which result in acquisition of property by the Government. Liquidation of any Business and Industrial (B&I) or guaranteed loan is excluded from the provisions of this regulation.

§ 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (including transfer with assumption) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to the Government or by foreclosure as outlined in this Subpart. Except for Multiple-family Housing (MFH) borrowers subject to the prepayment restriction of the Housing and Community Development Act of 1979, as

amended, borrowers who are willing to voluntarily liquidate their loan(s) may be given 60 days to accomplish the liquidation, or a longer time within reason if applicable loan servicing regulations permit an extension of time. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to the Government in accordance with applicable portions of § 1955.10 of this Subpart.

§1955.3 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Escrow agent.* A designated attorney or title insurance company which is approved as a loan closing agent in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1).

(b) *Government.* The United States of America acting through the Farmers Home Administration (FmHA), U.S. Department of Agriculture; used interchangeably herein with "FmHA."

(c) *Loans to individuals.* Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Land Conservation and Development (LCD), Economic Opportunity (EO), Operating (OL), Emergency (EM), and Economic Emergency (EE), whether to individuals or entities, herein referred to as Farmer Programs (FP) loans; and Single-family Housing (SFH), including both Sections 502 and 504 loans.

(d) *Loans to organizations.* Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Irrigation and Drainage (I&D) and other Soil and Water Conservation measures; loans to Indian Tribes and Tribal Corporations; Grazing Association, shift-In-Land-Use; Economic Opportunity Cooperative (EOC); Biomass Energy (BE); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); Rural Rental Housing (RRH) to both individuals and groups and Labor Housing (LH) to both individuals and groups. The housing-type organization loans identified here are referred to in this Subpart collectively as Multiple-family Housing (MFH) loans.

(e) *Market value.* The most probable price in terms of money which a property should bring in competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

(f) *Nonrecoverable costs.* Cost incurred after Government acquisition of title to the property and charged to an inventory account.

(g) *OGC.* The Office of the General Counsel, U.S. Department of Agriculture; refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

(h) *Recoverable costs.* Costs charged to a borrower's account paid or incurred prior to Government acquisition of title to the property.

(i) *Servicing official.* For loans to individuals as defined in paragraph (c) of this section, the servicing official is the County Supervisor; for all other types of loans, the servicing official is the District Director.

§ 1955.4 Redelegation of authority.

Authorites will be redelegated to the extent possible, consistent with program requirements and available resources.

(a) The State Director is authorized to redelegate in writing any authority in this Subpart to a Program Chief or Program Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a) of this Subpart may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

(b) The District Director is authorized to redelegate in writing any authority delegated to the district Director in this Subpart to an Assistant District Director determined by the District Director to be qualified. Authority of District Directors in this Subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

(c) The County Supervisor is authorized to redelegate in writing any authority delegated to the County Supervisor in this Subpart to an Assistant County Supervisor, GS–7 or above, determined by the County Supervisor to be qualified. Authority of County Supervisors in this Subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

(d) The monetary limitations on acceptance of voluntary conveyance as provided for in §1955.10(a) of this Subpart may *not* be redelegated from a higher-level official to a lower-level official.

§ 1955.5 General actions.

(a) *Assignment of notes to FmHA.* If voluntary conveyance or foreclosure is approved and the insured note is not held in the County or District Office, the approval offical will request the Finance Office to purchase the note and forward it to the appropriate office. Voluntary conveyance may be closed pending receipt of the note(s), and foreclosure may also be processed pending receipt of the note(s) unless the original note is required in connection with the foreclosure action.

(b) *Execution of documents.* (1) After liquidation of loans to individuals has been approved by the appropriate official, the County Supervisor is authorized to execute all necessary forms and documents except notices of acceleration required to complete transactions covered by this Subpart.

(2) After liquidation of loans to organizations has been approved by the appropriate official, the District Director is authorized to execute all forms and documents except notices of acceleration required to complete actions covered by this Subpart except when State office or National Office approval is required because of monetary limits or policy determinations.

(c) *Unused loan funds.* Funds remaining in a supervised bank account will be handled in accordance with § 1902.15(d) of Subpart A of Part 1902 of this Chapter before a voluntary conveyance or foreclosure is processed.

(d) *Payment of costs.* Costs related to liquidation of a loan will be paid by preparation of Standard Form-1034, "Public Voucher for Purchase and Services Other Than Personal," Standard Form-1143, "Advertising Order," or Form FmHA 1955–60, "Solicitation, Quotation, Contract, Inspection and Invoice," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to the respective Forms Manual Insert (FMI) as either a recoverable or nonrecoverable cost as defined § 1955.3 (f) and (h) of this Subpart.

§§ 1955.6–1955.9 [Reserved]

§1955.10 Voluntary conveyance of real estate by the borrower to the Government.

Efforts to obtain voluntary conveyance should be made only after servicing efforts as outlined in the servicing regulations for the respective loan programs have failed and the borrower has been given adequate opportunity to transfer or sell the property (subject to any prepayment restriction of the respective loan program.)

(a) *Authority.* (1) *Loans to individuals.* The County Supervisor, District Director, and State Director are authorized to accept voluntary conveyance provided the total indebtedness against the property (including prior and junior liens) does

not exceed the respective loan approval authority for the type of loan (or combination of types) involved as outlined in Exhibits A through E of FmHA Instruction 1901–A (available in any FmHA office).

(2) *Loans to organizations.* (i) The State Director is authorized to approve voluntary conveyance of property securing MFH, Shift-in-Land-use, Grazing Association, Irrigation and Drainage, and Indian Tribes and Tribal Corporation loans if the total indebtedness against the property (including prior and junior liens) does not exceed his/her approval authority for the type of loan involved; and EOC loans, regardless of amount of indebtedness. Loan approval authorities are outlined in Exhibits A through E of FmHA Instruction 1901–A (available in any FmHA office.).

(ii) Offers to convey property securing loans other than those outlined in paragraph (a)(2)(i) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance. In these cases the State Director will forward the voluntary conveyance docket, a statement of essential facts, and his/her recommendation to the National Office along with the borrower's case file.

(b) *Forms and documents.* All forms and documents in connection with voluntary conveyance will be prepared and distributed in accordance with the respective FMI or applicable OGC instructions. For loans to individuals when the County Supervisor has approval authority, preparation of a voluntary conveyance docket is not required. However, the facts will be documented in the running record of the borrower's case file. For all other loans, the official who is responsible for servicing the loan will prepare a voluntary conveyance docket and submit the docket to the appropriate approval official.

(c) *Liens against the property other than FmHA liens.* (1) *Prior liens.* (i) The approval official will determine whether or not prior liens will be paid. Normally, the Government will pay prior liens in full prior to acquisition if:

(A) A substantial recovery on the Government's investment plus the amount of the prior lien(s) can be obtained; and

(B) The holder of the prior lien(s) objects to the Government accepting voluntary conveyance subject to the prior lien(s), if consent of the prior lienholder(s) is required.

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) will be made while title to the property is held by the Government in accordance with § 1955.67(a) of Subpart B of Part 1955 of this Chapter.

(2) *Junior liens.* The borrower must satisfy junior liens on the property (except FmHA liens) and pay real estate taxes or assessments which are or will become a lien on the property. However, if the borrower is unable or unwilling to do so, settlement of the liens may be made if settlement would be in the best interest of the Government, considering all factors such as length of time required to foreclose, vandalism or other deterioration of the property which might occur, and effect on management of a MFH project and its tenants. An FmHA official will contact junior lienholders, negotiate the most favorable settlement possible, and determine whether it is in the Government's best interest to settle the junior liens and accept the voluntary conveyance.

(i) For loans to individuals, the approval official is authorized to settle junior liens in an aggregate amount not to exceed $1,000 in each voluntary conveyance case. For greater amounts, prior authorization must be obtained from the State Director.

(ii) For loans to organizations, the State Director will determine whether or not junior liens will be settled and voluntary conveyance accepted.

(3) *Payment of liens.* A lien to be settled in accordance with paragraphs (c)(1)(i) or (c)(2) of this section will be paid as outlined in § 1955.5(d) of this Subpart and charged to the borrower's account as recoverable costs.

(d) *Offer of voluntary conveyance.* An offer of voluntary conveyance will consist of the following:

(1) Form FmHA 1955–1, "Offer to Convey Security."

(2) Warranty deed, or other deed approved by OGC to comply with State laws, prepared by FmHA. The deed will not be recorded until it is determined the voluntary conveyance will be accepted. At the time of the offer, the borowers will be informed that the conveyance will not be accepted until the property has been appraised and a lien search has been obtained. If the voluntary conveyance is not accepted, the deed and Form FmHA 1955–1, properly executed, will be returned to the borrower along with a memorandum stating the reason(s) for nonacceptance.

(3) A current financial statement containing information similar to that required to complete Forms FmHA 410–1, "Application for FmHA Services"; 410–4, "Application for Rural Housing Assistance (Nonfarm Tract);" or 1930–8, "Balance Sheet;" and information on present income and potential earning ability.

(4) For organization borrowers which are corporations, a duly-adopted Resolution by the governing body authorizing the conveyance and certified by the Corporate Secretary with the corporate seal affixed. The Resolution will indicate which officers of the corporation are authorized to execute the offer to convey and the deed on behalf of the corporation. If shareholder approval is necessary, the Resolution will specifically recite that shareholder approval has been obtained.

(5) If water rights, development rights, or other use rights are not fully covered in the deed, the advice of OGC will be obtained and appropriate documents to transfer rights to the Government will be obtained before the voluntary conveyance is accepted. The documents will be recorded, if necessary, in connection with closing the conveyance.

(6) If property is under lease, an assignment of the lease to the Government will be obtained with the effective date being the date the voluntary conveyance is closed. If an oral lease is in force, it will be reduced to writing and assigned to the Government.

(7) For MFH loans, assignment of Housing Assistance Payment (HAP) Contracts will be obtained. Rental Assistance will be retained until the State Director is advised by OGC that FmHA has title to the property.

(8) The borrower may be required to provide title insurance when the State Director has determined it is necessary to protect the Government's interest.

(e) *Appraisal of property.* As soon as practicable after an offer of voluntary conveyance, but before acceptance by FmHA, an appraisal of the property will be made by a qualified FmHA employee to establish the market value of the property in its existing condition. If a qualified FmHA appraiser is not available to appraise property securing a loan other than SFH, MFH, or Farmer Programs loans, the State Director may obtain an appraisal from a qualified appraiser outside FmHA in accordance with Subpart D of Part 1955 of this Chapter. For property securing SFH, MFH, or Farmer Programs loans, an appraisal will not be obtained from a source outside FmHA unless prior approval is obtained from the National Office.

(f) *Processing offer to convey security and acceptance by FmHA.* If a borrower has both SFH and other type loans, the portion of this paragraph dealing with the loan(s) other than SFH will be followed.

(1) *SFH loans.* The policy is to accept an offer of voluntary conveyance of

property securing SFH loans in full satisfaction of the debt regardless of market value of the property if the County Supervisor determines the borrower has cooperated in good faith, satisfactorily maintained the property and otherwise fulfilled the covenants of the loan to the best of the borrower's ability. If the County Supervisor cannot make these determinations affirmatively, the offer for full satisfaction of the debt will not be accepted unless the value of the property is at least equal to the debt. However, the borrower may make a new offer for a credit equal to the value of the property as determined by FmHA. The conveyance will be processed as follows:

(i) Before accepting the offer, the County Supervisor will transmit the deed to an escrow agent requesting a title search covering the period of time since the latest title opinion in the case file. The same agent who closed the loan should be used, if possible; otherwise, one will be selected from the approved list of escrow agents, taking care that cases are distributed fairly among approved agents. The escrow agent may be instructed that the County Supervisor considers the voluntary conveyance offer conditionally approved, and the escrow agent may record the deed after the title search if there are no liens against the property other than:

(A) The FmHA lien(s);

(B) Prior liens when FmHA has advised the escrow agent that title will be taken subject to the prior lien(s) or has told the escrow agent that the prior lien(s) will be settled in accordance with § 1955.10(c)(1); and/or

(C) Real estate taxes and/or assessments which must be paid when title to the property is transferred.

(ii) If junior liens are discovered, the escrow agent will be requested to provide FmHA with the lienholder's name, amount of lien, date recorded, and the recording information (recording office, book and page), return the unrecorded deed to FmHA, and await further instructions from FmHA. In such cases, the County Supervisor will proceed in accordance with § 1955.10(c)(2) of this Subpart. If agreement has been reached with the lienholder(s) for settling the junior lien(s) in order to accept the conveyance, the deed will be returned to the escrow agent for a title update and recording.

(iii) The escrow agent will be requested to provide a certification of title to FmHA after recordation of the deed. A certification of title is a statement that fee title is vested in the Government subject only to the FmHA lien(s) and prior liens previously approved by FmHA. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with § 1955.10(h).

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* For CONACT loans to individuals as defined in § 1955.3 where the FmHA indebtedness plus any prior liens exceeds the market value of the property, the County Committee must make the recommendation set forth in the FMI for Form FmHA 440–2, "County Committee Certification or Recommendation," (available in any FmHA office) if the borrower is to be released from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value, and the borrower will determine if he/she wishes to make a new offer on that basis. If a new offer is made and accepted, the account will be handled as an unsatisfied account. (See § 1955.16(f) of this Subpart).

(i) *Loans which are within the County Supervisor's approval authority.* The same procedure outlined in paragraph (f)(1) (i) through (iii) of this section will be followed; and the conveyance will be accepted in full satisfaction of the indebtedness unless the market value is less than the FmHA indebtedness plus any prior liens and the County Committee has *not* recommended the borrower be released from liability, in which case, the conveyance will be accepted for the market value of the property less the prior liens, if any.

(ii) *Loans which are NOT within the County Supervisor's approval authority.*

(A) When an offer to convey is received from the borrower, the County Supervisor will request an escrow agent, selected in accordance with paragraph (f)(1)(i) of this section, to make a title search covering the period of time since the latest title opinion in the case file. A voluntary conveyance docket consisting of the following will be prepared and forwarded to the appropriate approval official:

(*1*) Form FmHA 1955–2, "Report on Real Estate Problem Case;"

(*2*) Report of title search;

(*3*) Borrower's offer of voluntary conveyance (consisting of applicable items outlined in paragraphs (d) (1) through (7) of this section;

(*4*) Current appraisal of property;

(*5*) Unpaid balance on FmHA indebtedness and other liens, both prior and junior, if any;

(*6*)) Form FmHA 440–2 executed in accordance with the FMI concerning release from liability if property value is less than the debt plus prior liens, if any; and

(*7*) Borrower's case file.

(B) The approval official will determine whether or not the conveyance should be accepted. If he/she concurs, the docket will be returned to the County Supervisor with a memorandum of conditional approval. The same conditions for release of liability apply as in Paragraph (f)(2)(i) of this section. If he/she does not /concur in acceptance of the conveyance, the docket will be returned with a memorandum stating the reasons for rejecting the offer and giving instructions to the County Supervisor for further servicing of the account.

(C) After the approval official has conditional approved the conveyance, the County Supervisor will forward the deed to the escrow agent with instructions to record it provided no liens have been recorded since the recent title search. The escrow agent will be requested to provide a certification of title to FmHA after recordation of the deed. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with § 1955.10(h).

(3) *Loans to organizations.* (i) When an offer of voluntary conveyance is received from an organization borrower, the District Director will prepare and submit to the State Director a voluntary conveyance docket as follows:

(A) *For MFH loans only.* The policy is to accept an offer of voluntary conveyance in full satisfaction of the debt provided the borrower has acted in good faith, satisfactorily maintained the property, and otherwise fulfilled the convenants of the loan to the best of the borrower's ability. However, if the market value of the security (less prior liens, if any) is less than the FmHA debt, the County Committee must determine whether the borrower should be released from liability.

(*1*) Report on Multi-Family Housing Problem Case, (Exhibit A to this Subpart available in any FmHA office);

(*2*) Liquidation and management plan with specific recommendations of the District Director;

(*3*) Form FmHA 1955–1;

(*4*) Resolution authorizing the conveyance, if applicable;

(*5*) Report of title search from an approved escrow agent covering the period of time since the latest title opinion in the case file;

(*6*) Form FmHA 1930–7, "Statement of Budget, Income and Expense (Excluding Depreciation)", (operating budget for first year and typical year);

(7) Form FmHA 1930–8, Year End Report and Analysis for Fiscal Year Ending ————," (Balance Sheet Portion);

(8) Current appraisal prepared by a MFH designated appraiser;

(9) Balance on FmHA account(s) and other liens, if any;

(10) Assignment of Housing Assistance Payment (HAP) contracts, if applicable, along with evidence of contract with HUD;

(11) Current Statement of account from the Finance Office;

(12) Development plan with breakdown of costs, if applicable;

(13) Form FmHA 440–2, executed in acordance with the FMI when applicable; and

(14) Borrower's case file.

(B) *For organization loans other than MFH.* (1) Report on Servicing Action (Exhibit A to Subpart E of Part 1951 of this Chapter, available in any FmHA office);

(2) Liquidation and management plan;

(3) Form FmHA 1955–1;

(4) Organization's Resolution authorizing the conveyance;

(5) Report of title search from an approved escrow agent covering the period of time since the latest title opinion in the case file;

(6) Form FmHA 442–3, "Balance Sheet";

(7) Current appraisal;

(8) Statement showing income and expenses due but unpaid;

(9) Balance on FmHA account(s) and other liens, if any;

(10) Form FmHA 440–2, executed in accordance with the FMI concerning release form liability if property value is less than the FmHA indebtedness plus prior liens, if any; and

(11) Borrower's case file.

(*ii*) The State Director will obtain the advice of OGC on all offers of voluntary conveyance from organization borrowers. OGC will issue instructions for processing and closing the conveyance. The District Director will transmit the closing instructions to the escrow agent.

(*iii*) When the deed has been recorded and a certification of title is received from the escrow agent that fee title is vested in the Government subject only to the FmHA lien(s) and prior liens previously approved by FmHA, the District Director will notify the borrower of acceptance of the conveyance in full satisfaction of the indebtedness unless the market value is less than the indebtedness and the County Committee has *not* recommended the borrower be released from liability, in which case the conveyance will be accepted for the market value of the property only if the offer reflects these terms.

(g) *Closing of conveyance.* (1) The conveyance to the Government will be considered closed when the recorded deed has been returned to FmHA, a certification of title is received from the escrow agent that title is vested in the Government with no outstanding encumbrances other than the FmHA lien(s) or previously approved prior liens, and the borrower is notified of the acceptance of the conveyance. For loans to organizations, OGC will be requested to review the case to verify that it was closed properly.

(2) When costs incident to the completion of the transaction are to be paid by the Government, the servicing official will prepare and process the necessary documents as outlined in § 1955.5(d) of this Subpart and the costs will be charged to the borrower's account as recoverable costs. This includes taxes and assessments, water charges which protect the right to receive water, other liens, escrow agent's fee, and any other cost related to the conveyance.

(h) *Actions to be taken after closing conveyance.* (1) When the FmHA account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and borrower released from liability."

(2) When the FmHA account is not satisfied and the borrower is not released from liability, the note(s) will be retained by FmHA.

(3) The servicing official will release the lien(s) of record, indicating that the lien was satisfied by surrender of security or that the lien is released but not satisfied, whichever is applicable. If the lien is to be released but not satisfied, OGC will provide the type of instrument required to comply with State laws.

(4) After release of the lien(s), the servicing official will return the following to the borrower:

(i) If borrower is released from liability, the satisfied note(s) and a copy of Form FmHA 1955–1 showing acceptance by the Government; or

(ii) If borrower is not released from liability, a copy of Form FmHA 1955–1 showing acceptance by the Government.

(5) For MFH loans, the State Director will request authorization to cancel the interest credit and rental assistance, if applicable. The cancellation request will be made by memorandum to the unit in the Finance Office which handles MFW accounts.

(6) Actions outlined in § 1955.16 of this Subpart will be taken, as applicable.

§ 1955.11 Conveyance of property to FmHA by trustee in bankruptcy.

(a) *Authority.* With the advice of OGC (and prior approval of the National Office for MFH loans), the State Director within his/her authority is authorized to accept a conveyance of property to the Government by the Trustee in Bankruptcy, provided:

(1) The conveyance will permit a substantial recovery on the FmHA debt.

(2) FmHA will acquire title free of all liens and encumbrances except FmHA liens.

(b) *Fees and deed.* (1) FmHA may pay any necessary and proper fees in connection with the conveyance. Before paying a fee in excess of $300 for a trustee's deed, prior approval of the Administrator must be obtained. The State Director will process the necessary documents as outlined in § 1955.5(d) of this Subpart for payment of fees as recoverable costs.

(2) Conveyance may be by trustee's deed instead of a warranty deed. If upon advice of OGC it is determined necessary to obtain clear title, a deed form the borrower will also be obtained.

(c) *Acceptance.* The conveyance will be accepted for an amount of credit to the borrower's FmHA account(s) as set forth in § 1955.10(f) (1), (2) or (3)(i)(A) or (iii) of this Subpart, depending on the type of loan.

(d) *Reporting.* Acquisition of property under this section will be reported to the Finance Office in accordance with § 1955.16(a) of this Subpart.

§ 1955.12 Conveyance of real property to FmHA by the General Services Administration (GSA).

Section 414(a) of the Housing and Urban Development Act of 1969, as amended, provides that GSA may transfer federally-owned surplus real property to the Secretary of Agriculture upon request for sale or lease to individual or families with low or moderate income.

(a) *Authority.* Requests to GSA for transfer of surplus property which is suitable for FmHA's housing programs will be made only by the Assistant Administrator, Housing.

(b) *Costs.* Necessary costs, if any, in connection with the transfer of property under this section will be paid by FmHA according to § 1955.5(d) of this Subpart. The proper documents will be prepared by the appropriate housing staff in the National Office as directed by the Assistant Administrator, Housing.

(c) *Reporting.* When property is acquired under this section, the Assistant Administrator, Housing, will notify the appropriate State Director.

Related documents and correspondence will be forwarded to the State Director who will report the acquisition to the Finance Office in accordance with § 1955.16(a) of this Subpart. The Finance Office will establish an inventory account in the same manner as for any other acquisition.

§ 1955.13 Acquisition of property at tax sale or bankruptcy sale.

When servicing instructions for the type loan involved permit FmHA to bid at a tax sale or a bankruptcy sale, the acquisition of property at this type sale will be reported to the Finance Office in accordance with § 1955.16(a) of this Subpart.

§ 1955.14 [Reserved]

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale, transfer with assumption, or voluntary conveyance; and when either a net recovery can be made or when failure to foreclose would adversely affect FmHA programs in the area.

(a) *Authority.* (1) *Loans to individuals.* The District Director is authorized to approve foreclosure and accelerate the account.

(2) *Loans to organizations.* (i) The State Director is authorized to approve foreclosure of RRH, RCH, RHS, LH, Shift-in Land Use, Grazing Association, Irrigation and Drainage, BE, and Indian Tribes and Tribal Corporation loans when the amount of the FmHA secured debt does not exceed the loan approval authority of the State Director; and EOC loans regardless of amount of debt.

(ii) For all other organization loans, foreclosure will not be initiated without prior approval of the Administrator. The State Director will obtain OGC's opinion on the steps necessary to foreclose the loan, and forward the appropriate problem case report, a statement of essential facts, his/her recommendation, copy of the OGC opinion, and the borrower's case files to the Administrator, Attn: Assistant Administrator (appropriate loan division) with a request for authorization to initiate foreclosure

(b) *Problem case report.* When foreclosure is recommended, the servicing official will prepare Form FmHA 1955–2 for Farmer Programs or SFH loans, Exhibit A to this Subpart for MFH loans, or Exhibit A to FmHA Instruction 1951–E (available in any FmHA office) for other organization loans. For loans other than SFH and MFH, the recommendation of the County Committee must be included. If chattel security is also involved, Forms FmHA 455–1, "Request for Legal Action"; 455–2, "Evidence of Conversion"; and 455–22, "Information for Litigation"; as applicable to the case, will be prepared in accordance with the respective FMIs and made a part of the problem case submission. A statement must be included by the servicing official in the narrative that all servicing actions required by FmHA loan servicing regulations have been taken and all required notices given to the borrower.

(1) *Appraisal report.* An appraisal which reflects market value *in existing condition* will be submitted with the problem case report. For loans other than Farmer Programs and SFH, the State Office staff will assist as necessary in obtaining an appraisal by a qualified individual. If for any reason the value changes substantially during the foreclosure process, the servicing official will notify the State Director immediately. Otherwise the appraisal submitted with the problem case report will be used as a basis for calculating the Government's bid at the foreclosure sale. In cases where the foreclosure process is extremely lengthy, or for some other reason it is felt the latest appraisal report may not reflect market value, the State Director at his/her discretion may request a new appraisal prior to the foreclosure sale.

(2) *Recommendation for deficiency judgment.* If the debt will not be satisfied by the foreclosure, the borrower's financial situation will be assessed to determine if there is a possibility of further recovery on the account through a deficiency judgment. A summary of these determinations will be fully documented and appropriate recommendations made concerning deficiency judgment in the applicable problem case report. For RH loans subject to recapture of interest credit, the debt includes total subsidy granted and principal reduction attributed to subsidy in addition to unpaid principal and interest. However, a deficiency judgment will not be recommended in a SFH case to recapture subsidy or where the borrower was granted a moratorium provided the borrower faithfully tried to meet loan obligations. In crediting security value against indebtedness, credit will be given first to interest, principal and recoverable costs and then to recapture of subsidy.

(c) *Submission of problem case.* The servicing official will submit the completed problem case docket to the official authorized to approve the foreclosure (approval official). Before approval of foreclosure and acceleration of the account, the approval official is responsible for review of the problem case report to see that all items are complete and that all required servicing actions have been taken and all required notices given the borrower. The narrative portion fo the report should provide complete information on the subjects of borrower's financial condition, deficiency judgment in case the debt is not satisfied by the foreclosure, and other pertinent background items. The approval official will approve or disapprove the foreclosure, or make a recommendation and refer the case to the National Office, if not within his/her approval authority. If foreclosure is not approved, the case will be returned to the originating office with instructions for further servicing. Problem case submission is as follows:

(1) *For loans to individuals.* The County Supervisor will submit the case to the District Director.

(2) *For loans to organizations.* The District Director will submit the case to the State Director along with a proposed liquidation and management plan covering the time the foreclosure is in process. The State Director will obtain the advice of OGC if required in connection with the type of loan being liquidated.

(d) *Approval of foreclosure.* When foreclosure is approved, it will be handled as follows:

(1) *Prior lien(s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA loan(s), either settling the prior lien or foreclosing subject to it. The assistance of OGC should be obtained in weighing the alternatives, with the objective being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA's position. If State laws affect this action, a State supplement will be issued with the advice of OGC to establish the procedure to be followed.

(2) *Acceleration of account.* Subject to paragraphs (i), (ii), and (iii) of this paragraph, the account will be accelerated using a notice substantially similar to Exhibit B or Exhibit C to this Subpart (available in any FmHA office) to be signed by the official who approved the forceclosure. The notice will be sent by certified mail, return receipt requested, to each obligor

individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official, and the Hearing Officer identified in the notice according the Subpart B of Part 1900 of this Chapter. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH/Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

(i) Where monetary default is involved, the acount may be accelerated immediately after approval of foreclosure.

(ii) Where monetary default is *not* involved, the account will not be accelerated until the concurrence of OGC is obtained.

(iii) If borrower obtained the loan while a civilian, entered military service after the loan was closed, and FmHA has not obtained a waiver of rights under the Soldiers and Sailors Relief Act, the account will not be accelerated until OGC has reviewed the case and given instructions.

(3) *Offers by borrower after acceleration of account.* After the account is accelerated, the servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement. The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation. If the loan involved is within his/her approval authority the approval official will decide whether or not the borrower's offer will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate. If payments insufficient to pay the entire indebtedness, or insufficient to comply with any arrangements agreed to between FmHA and the borrower, are mistakenly accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenant in the real estate instruments will result and the Farmers Home Administration may proceed as through no such payment had been made. If an offer from the borrower is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. In all cases the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be advised when foreclosure is no longer pending. When an account is reinstated under this section, assistance for which the borrower qualifies should be granted or reinstated (such as interest credit on an RH loan). When granting interest credits in such a case:

(i) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired; or

(ii) if an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA 451–10, "Request for Statement of Account," will be forwarded to the Finance Office by the approval official requesting a statement of account including all loans being foreclosed. For RH loans subject to recapture of interest credit, a request should be placed in the "Remarks" section of Form 451–10 that the total subsidy granted and principal reduction attributed to subsidy by shown. When an official statement of account is not required for foreclosure proceedings, account balances and recapture information may be obtained through the Inquiry Station of the Finance Office.

(5) *Appeals of foreclosure actions.* All appeals will be handled pursuant to Subpart B of Part 1900 of this Chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until all appeals by the borrower have been concluded or the time during which appeal may be made has elapsed.

(6) *Petition in bankruptcy filed by borrower after acceleration of account.*

(i) When a notice of bankruptcy is received after an account has been accelerated, the foreclosure action must be suspended until:

(A) The banktruptcy case is *dismissed* or *closed* (a discharge of debtor does not close the case); or

(B) An Order lifting the automatic stay is obtained from the Bankruptcy Court.

(ii) The State Director will request the assistance of OGC in obtaining the Order(s) described in paragraph (c)(6)(i)(B) of this section.

(e) *Referral of case.* If the borrower fails to satisfy the account during the period of time specified in the acceleration notice, and no appeal is pending, the foreclosure process will continue:

(1) If the District Director is the approval official, he/she will forward the case file with all pertinent documents and information concerning the foreclosure action and appeal, if any, to the State Director for completion of the foreclosure.

(2) If the State Director is the approval official, or in cases referred by the District Director, the State Director will forward to OGC the case file and all documents needed by OGC to process the foreclosure. A State supplement will be issued, with the advice and assistance of OGC, to reflect the make-up of the foreclosure docket. Since foreclosure processing varies widely from State to State, each State supplement will be explicit in outlining step-by-step procedures. After referral to OGC, further actions will be in accordance with OGC's instructions for completion of the foreclosure. If prior approval of the Administrator is obtained, nonjudicial foreclosures for monetary default may be handled as outlined in a State supplement approved by OGC without referral to OGC before foreclosure.

(f) *Completion of foreclosure.* (1) *Foreclosure advertisement for organization loans subject to Title VI of the Civil Rights Act of 1964.* The advertisement for foreclosure sale of property subject to Title VI of the Civil Rights Act of 1964 will contain a statement substantially similar to the following: "The property described herein was purchased or improved with Federal financial assistance and is subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other similarly worded Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age or sex in programs or

activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended or for so long as the purchaser owns it, whichever is later. The purchaser will be required to sign Form FmHA 400–4, 'Assurance Agreement,' if the property will be used for its original or similar purposes."

(2) *Expenses.* Expenses which are incurred in connection with foreclosure, including legal fees, will be paid at the time recommended by OGC by processing the necessary documents as outlined in § 1955.5(d) of this Subpart. Costs will be charged to the borrower's account as recoverable costs unless otherwise directed by OGC.

(3) *Gross investment.* The gross investment is the sum of the following:

(i) The unpaid balance of principal and interest on the FmHA secured loan(s) and advances; and where State law permits, unsecured debts;

(ii) All recoverable costs charged (or to be charged) to the borrower's account in connection with the foreclosure action including but not limited to payment of real estate taxes and assessments, prior liens, legal fees including U.S. Attorney's and U.S. Marshal's and management fees; and

(iii) If a SFH loan subject to recapture of interest credit is involved, the total amount of subsidy granted and principal reduction attributed to subsidy.

(4) *Amount of Government's bid.* Except as modified by paragraph (f)(5)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less.

(5) *Bidding.* The State Director will designate an individual to bid on behalf of the Government unless judicial proceedings provide for someone other than an FmHA employee to enter the Government's bid. The designation will be in writing and will establish the amount to be bid. The designee will enter the bidding when no other party makes a bid or when the last bid made will result in the property being sold for less than the bid authorized in paragraph (f)(4) of this section.

(i) When FmHA is the senior lienholder, only one bid will be entered, and that will be for the amount authorized by the State Director.

(ii) When FmHA is not the senior lienholder *and* OGC advises that the borrower has no redemption rights or if a deficiency judgment will be obtained, the State Director may authorize the person who will bid for the Government to make incremental bids in competition with other bidders. If incremental bidding is desired, the State Director's instructions to the bidder will state the initial bid, bidding increments, and the maximum bid determined in accordance with paragraph (f)(4) of this section.

(g) *Reports on sale and finalizing foreclosure.* Immediately after a foreclosure sale at which the State Director has designated a person to bid on behalf of the Government, the servicing official will furnish the State Director a report on the sale. The State Director will forward a copy of this report to OGC and, for MFH loans, to the National Office. Based on OGC's instructions, a State supplement will provide a detailed outline of actions necessary to complete the foreclosure.

§ 1955.16 Actions required after voluntary conveyance or foreclosure is completed.

(a) *Submission of Form FmHA 1955–3.* When real property is acquired by the Government, the servicing official will prepare and distribute Form FmHA 1955–3, "Advice of Property Acquired," in accordance with the FMI, immediately after a voluntary conveyance is closed, a foreclosure sale is completed, or property is acquired by any other means. For MFH loans, the State Director should forward a copy to the National Office for monitoring purposes.

(b) *Existing lease.* If property acquired by FmHA is under an existing written lease, a copy of the lease will be attached to Form FmHA 1955–3. Any oral lease in effect will be reduced to writing on Form FmHA 1955–3. The Finance Office will establish a lease account in the lessee's name. If an existing lease is terminated by foreclosure, a new lease may be considered pursuant to § 1955.66 of Subpart B of Part 1955 of this Chapter except for MFH property, for which leasing as a project is generally not authorized.

(1) The servicing official will notify the lessee in writing that the Government has acquired the former lessor's rights under the lease and direct the lessee to remit all payments to FmHA. Receipts for collections will read: "Lease proceeds from property formerly owned by (borrower's name and case number) and leased to (lessee's name)." All lease proceeds collected will be remitted to the Finance Office with Form FmHA 451–2, "Schedule of Remittances," in accordance with the FMI and § 1951.58 of Subpart B of Part 1951 of this Chapter (available in any FmHA office); or for MFH, Form FmHA 444–9, "Multiple Housing Certification and Payment Transmittal."

(2) Payments under an existing lease which were due and payable *before* the date the property is acquired will be applied to the unsatisfied balance on the FmHA account, if any, first to advances by the Government, then to the note account as an extra payment. If there is a surplus, the Finance Office will forward a refund check payable to the former borrower to the county or district office for delivery to the former borrower.

(3) Payments under an existing lease which are due and payable *after* the date the property is acquired will be applied to the lease account.

(c) *Existing management agreement.* For MFH, if a property is being managed prior to acquisition on behalf of the borrower, the State Director will request the assistance of the National Office in determining if the agreement should be cancelled or extended. In any event, management services should be obtained as soon as possible in accordance with § 1955.65 of Subpart B of Part 1955 of this Chapter.

(d) *Inventory account.* The Finance Office will establish an inventory account for the property and assign an advice number. The county or district office, as appropriate, will be notified of the advice number by memorandum, with a copy to the State Office. The value of the property entered into the inventory account will in all cases be the market value as of the date acquired (less outstanding liens if the property was acquired subject to any liens).

(e) *Credit to the borrower's account.* (1) *For SFH accounts.* (i) If the loan is subject to recapture of subsidy, the amount of recapture will be computed in accordance with Subpart I of Part 1951 of this Chapter.

(ii) When FmHA acquired the property, the account will be satisfied unless:

(A) In a voluntary conveyance, the borrower is *not* released from liability in which case the account credit will be the market value of the property (less outstanding liens, if any); or

(B) In a foreclosure, the bid is less than the account balance and a deficiency judgment will be sought for the difference, in which case the account credit will be the amount of FmHA's bid.

(2) *For all types of accounts other than SFH.* When FmHA acquired the property, the account credit will be as follows:

(i) In a voluntary conveyance, the account will be satisfied unless the borrower is *not* released from liability in which case the account credit will be the market value of the property (less outstanding liens if any).

(ii) In a foreclosure, the account credit will be the amount of FmHA's bid

except when incremental bidding as provided for in § 1955.25 (f)(5)(ii) of this Subpart was used, in which case the account credit will be the maximum bid that was authorized by the State Director.

(3) *For all types of accounts when FmHA did not acquire the property.* The sale proceeds will be handled in accordance with applicable State laws with the advice and assistance of OGC, including remittance of funds to the Finance Office, application of the borrower's account credit, and disbursement of funds in excess of the amount due FmHA.

(4) *In cases where FmHA acquired security property by means other than voluntary conveyance or foreclosures.* In these cases, such as conveyance by a bankruptcy trustee or by Court Order, the account credit will be as outlined in paragraph (e)(1)(ii)(A) or (e)(2)(i) of this section, as applicable.

(f) *Unsatisfied account.* Unsatisfied account balances will be settled in accordance with Part 1864 of this Chapter (FmHA Instruction 456.1) or the account will be reclassified to collection-only by submitting Form FmHA 404–1, "Case Reclassification," to the Finance Office. After reclassification to collection-only, Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," will be submitted to the Finance Office to furnish the borrower's new address, if known. Collection-only accounts will be serviced in accordance with § 1951.7 of Subpart A of Part 1951 of this Chapter.

(g) *Deficiency judgment.* When a deficiency judgment is to be sought, the State Director will initiate action pursuant to §1962.49 of Subpart A of Part 1962 of this Chapter. When a judgment is obtained, the State Director will send Form FmHA 445–20, "Notice of Judgment," to the Finance Office which will establish a judgment account to be serviced pursuant to §1962.49 (e) of Subpart A of Part 1962 of this Chapter. If attempts to obtain a judgment are not successful, the remaining debt will be settled or serviced pursuant to § 1951.7 of Subpart A of Part 1951 of this Chapter.

§ 1955.17 Exception authority

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with the authorizing statute if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.18 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws and to provide guidance to FmHA officials. State supplements will be submitted in the National Office for post approval in accordance with FmHA Instruction 021.2 (available in any FmHA Office).

§ 1955.19 [Reserved]

§ 1955.20 Acquisition of chattel property

Every effort should be made to avoid acquistion of chattel property. Whenever possible, it is preferable to have the borrower of FmHA liquidate the property in accordance with Subpart A of Part 1962 of this Chapter and apply the proceeds to the borrower's account(s).

(a) *Methods of acquisition.* Chattel property may be acquired by FmHA through purchase at the following types of sale:

(1) Execution sale conducted by the U.S. Marshal, sheriff or other party acting under Court order to satisfy judgment liens.

(2) FmHA foreclosure sale conducted by the U.S. Marshal or sheriff in States where a State supplement provides for sales to be conducted by them.

(3) Sale by trustee in bankruptcy.

(4) Public sale by prior lienholder.

(5) Public sale conducted under the terms of Form FmHA 455–4, "Agreement for Voluntary Liquidation of Chattel Security," the power of sale in security agreements or crop and chattel mortgage, or similar instrument, if authorized by State supplement.

(b) *Attending sales.* The Servicing Official will:

(1) Attend all sales described in paragraph (a)(5) of this section.

(2) Attend public sales by prior lienholders when the market value of the chattel property is significantly more than the amount of the prior lien(s).

(3) Obtain the advice of the State Director on attending sales described in paragraph (a) (1), (2), and (3) of this section.

(c) *Appraising chattel property.* Prior to the sale, the servicing official will appraise chattel property using Form FmHA 440–21, "Appraisal of Chattel Property."

(d) *Abandonment of security interest.* The State Director may authorize abandonment of the Government's security interest when chattel property, considering costs of moving or rehabilitation, has no market value and obtaining title would not be in the best interest of the Government.

(e) *Bidding at sale.* (1) The servicing official is authorized to bid at sales described in paragraph (a) of this section. Ordinarily, only one bid will be made on items of chattel security unless the State Director authorizes incremental bidding. Bids will be made only when no other party bids or when it appears bidding will stop and the propety will be sold for less than the amount of the Government's authorized bid. The bid(s) will be the lesser of:

(i) The market value of the item(s) less the estimated costs involved in the acquisition, care, and sale of the item(s) of security; or

(ii) The unpaid balance of the borrower's secured FmHA debt plus prior liens, if any.

(2) Bids will not be made in the following situations unless authorized by the State Director:

(i) When chattel property under prior lien has a market value which is not significantly more than the amount owed the prior lienholder. If FmHA holds a junior lien on several items of chattel property, advice should be obtained from the State Director on bidding.

(ii) After sufficient chattel property has been bid in by FmHA to satisfy the FmHA debt, prior liens, and costs of the sale.

(iii) When the sale is being conducted by a lienholder junior to FmHA.

(iv) At a private sale.

(v) When the sale is being conducted under the terms of Form FmHA 455–3, "Agreement for Public Sale by Borrower."

(f) *Reporting acquisition of chattel propety.* Acquisition of chattel property will be reported by use of Form FmHA 1955–3 prepared and distributed in accordance with the FMI. The acquisition will be further documented in the case file by completing the reverse of Form FmHA 455–13, "Report of Sale of Chattel Security."

§§ 1955.21–1955.50 [Reserved]

Subpart B—Management of Property

§ 1955.51 Purpose.

This Subpart delegates authority and prescribes policies and procedures for:

(a) Management of real property which has been taken into custody by the Farmers Home Administration (FmHA) after abandonment by the borrower; and

(b) Management of real and chattel property which is in FmHA's inventory.

(c) Management of real and chattel property which is security for a guaranteed loan which FmHA is liquidating.

§ 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. This includes maintenance of grounds. Properties owned or controlled by FmHA will be maintained so that they are attractive, are not a detriment to the surrounding area and comply with State and local codes. Servicing of repossessed or abandoned chattel property is covered in Subpart A of Part 1962 of this Chapter, and management of inventory chattel property is covered in § 1955.80 of this Chapter.

§ 1955.53 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Contracting officer (CO).* "Contracting officer" means an FmHA employee designated to enter into or administer contracts and make related determinations and findings. Only the contracting officer and his/her designated representative are authorized to conduct official business with the contractor in the administration of a contract.

(b) *Custodial property.* Borrower-owned real property and improvements which serve as security for an FmHA loan, have been abandoned by the borrower, and of which FmHA has taken possession.

(c) *Government.* The United States of America, acting through the Farmers Home Administration (FmHA), U.S. Department of Agriculture; used interchangeable herein with "FmHA."

(d) *Inventory property.* Real property and related rights to which the Government has acquired title including all improvements, growing crops, inventory which is part of a business or facility and any other property which is usually sold with the real estate.

(e) *Loans to individuals.* Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Land Conservation and Development (LCD), Economic Opportunity (EO), Operating (OL), Emergency (EM), and Economic Emergency (EE) whether to individuals or entities, herein referred to as Farmer Programs (FP) loans; and Single-family Housing (SFH), including both Sections 502 and 504 loans.

(f) *Loans to organizations.* Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures; loans to Indian Tribes and Tribal Corporations; Grazing Associations; Shift-in-Land-Use; Biomass Energy (BE), Business and Industrial (B&I) to both individuals and groups; Economic Opportunity Cooperative (EOC); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); and Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type loans identified here are referred to in this Subpart collectively as Multiple-family Housing (MFH) loans.

(g) *Nonrecoverable costs.* Costs incurred after Government acquisition of title to the property and charged to an inventory account.

(h) *OGC.* The Office of the General Counsel, U.S. Department of Agriculture; refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

(i) *Recoverable costs.* Costs charged to a borrower's account paid or incurred prior to Government acquisition of the property.

(j) *Servicing official.* For loans to individuals as defined in paragraph (e) of this Section, the servicing official is the County Supervisor; for all other types of loans, the servicing official is the District Director.

(k) *Suitable property.* Property that could be used by a borrower to carry out the objectives of an FmHA loan program with financing provided through that program. Housing property located in an area whose designation has been changed from rural to nonrural and which is otherwise suitable property will be considered as if it were still in a rural area.

(l) *Surplus property.* Real estate acquired pursuant to the Consolidated Farm and Rural Development Act (CONACT) that is not suitable for sale to eligible applicants. It also includes suitable real property acquired pursuant to the (CONACT) which is not sold within 3 years.

(m) *Unsuitable property.* Property acquired pursuant to the Housing Act that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet minimum property standards for existing construction as adopted by FmHA in Subpart A of Part 1924 of this Chapter. It may be an otherwise-suitable SFH property which is so poorly located that it will not serve as an adequate residential unit.

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) The State Director may redelegate in writing any authority delegated to the State Director in this Subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(b) The District Director may redelegate in writing any authority delegated to the District Director in this Subpart to an Assistant District Director. Authority of District Directors in this Subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director For the Western Pacific Territories.

(c) The County Supervisor may redelegate in writing any authority delegated to the County Supervisor in this Subpart to an Assistant County Supervisor, GS-7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this Subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director For Western Pacific Territories.

§ 1955.55 Taking abandoned real property into custody and related actions.

(a) *Determination of abandonment.* When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s) if known, and schools if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying the property but has it listed for sale with a real estate broker or other arrangements made for its care, it will not be considered abandoned so long as it is adequately secured and maintained; and the account will be handled in accordance with § 1965.26(a) of Subpart A of Part 1965, § 1965.125 of Subpart C of Part 1965 or § 1965.85 of Subpart B of Part 1965 of this Chapter. If the borrower

has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of Part 1955 of this Chapter.

(b) *Taking property into FmHA custody.* When a property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment, and the servicing official shall proceed as follows without delay:

(1) If there is a prior lien, the servicing official will contact the prior lienholder to see what that lienholder plans to do to protect the security. If the prior lienholder will not protect the security as necessary, the servicing official shall take action as outlined in paragraph (b)(2) of this section.

(2) For loans to individuals, if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this Chapter, unless the borrower can be located and voluntary liquidation accomplished.

(3) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director with the advice of OGC will advise on writing a letter to the borrower by certified mail-return receipt requested, at the address currently used by the Finance Office, outlining proposed actions by FmHA to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest, and will advise how the property is to be managed in accordance with Subpart C of Part 1930 of this Chapter.

(ii) If the unpaid loan balance plus recoverable costs exceed the State Director's loan approval authority, the State Director will refer the case to the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Costs incurred in connection with procurement of such things as management services and obtaining audits of the borrower's accounts will be handled in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this Chapter and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(4) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a report on servicing action recommending that foreclosure be initiated in accordance with § 1955.15 of Subpart A of Part 1955 of this Chapter and submit the report to the State Director along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, and manage or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA has taken the real property into custody. Actions by FmHA must not damage or jeopardize livestock, growing crops, stored agricultural products or any other personal property which is not FmHA security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of $1,000 per property must have prior approval of the State Director.

(d) *Costs and income.* Payment for advances made by FmHA while the property is owned by the borrower will be requested by preparation of SF–1034, "Public Voucher for Purchases and Services Other Than Personal," for taxes, assessments, or other costs or Form FmHA 1955–60, "Solicitation, Quotation, Contract, Inspection, and Invoice," for securing the property, maintenance, essential repairs, and management services obtained pursuant to FmHA Instruction 1955–D (available in any FmHA office and submission of Form FHA 2024–1, "Miscellaneous Payment System," prepared and distributed according to the Forms Manual Inserts (FMIs). Expenditures will be charged to the borrower's account as recoverable costs. Income from the property will be remitted to the Finance Office with Form FmHA 451–2, "Schedule of Remittances," and applied first to advances made by the Government, if any, and then to the borrower's note account as an extra payment.

§§ 1955.56–1955.59 [Reserved]

§ 1955.60 Inventory real property subject to redemption.

If inventory property is subject to redemption rights, the State Director with prior approval of OGC will issue a State supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA will not lease the property until the redemption period has expired unless the State Director obtains prior authorization from OGC.

§ 1955.61 Eviction of persons occupying inventory real property.

Advice and assistance will be obtained from OGC when eviction action is necessary. Where State laws permit and *OGC has given authorization*, eviction may be effected through State courts rather than Federal courts. In those cases, a State supplement will be issued to provide

explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L (of Part 1944 of this Chapter) and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

If the former borrower has vacated the inventory property but left items of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by a FmHA lien, the personal property will be handled as outlined below unless otherwise directed by a State supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien (or liens) of record, the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA unless it is removed from the premises within seven (7) days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time specified, the servicing official will notify the former borrower at the last known address by certified mail, return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA unless it is removed within seven (7) days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder after notification as outlined in paragraphs (a) (1) and (2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list to the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by FmHA from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholder(s) less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a prior lienholder will be remitted to the Finance Office with Form FmHA 451–2, to be applied in the following order:

(i) To the inventory account up to the amount of expenses incurred by the Government in connection with the sale of the personal property (such as advertising and auctioneer, if used.)

(ii) To an unsatisfied balance on the FmHA loan account, if any.

(iii) To the borrower, if whereabouts is known.

(2) If personal property is not sold a mover or hauler may be authorized to take the items for moving costs; or, if necessary, payment may be made by use of Form FmHA 1955–60 to contract for its removal.

(c) *Payment of costs.* Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property.* Since State laws vary concerning disposal of abandoned motor vehicles, the State Director shall, with the advice of OGC, issue a State supplement outlining the method to be followed which will comply with applicable State law.

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property is suitability for program purposes. The suitability determination will be recorded in the running record of the case file.

(a) *Property other than housing.* Property which secured loans under the Consolidated Farm and Rural Development Act (CONACT) will be classified as "suitable" or "surplus." Properties acquired under the CONACT which are originally classified as suitable may be reclassified as surplus because of physical damage which occurs or change in economic conditions which affect its suitability for program purposes; and, if not sold within three years after acquisition, it must be declared surplus. If the property is offered for sale as surplus and the purchaser is eligible for FmHA program assistance, it may be reclassified as suitable if it is in fact suitable for program purposes.

(b) *Housing property.* Property which secured housing loans will be classified as "suitable" or "unsuitable" except for MFH property acquired by voluntary conveyance when the value was less than the debt and the borrower was *not* released from liability, which must be classified and disposed of under the CONACT provisions. Location, size, design, and functional and economic obsolescence must be considered in determining suitability. It is not intended to classify an otherwise-suitable dwelling as unsuitable simply because it contains more than 1,400 square feet of living area or design features which would not be permitted in a new dwelling or an existing dwelling not in the FmHA program. Although a property can be made suitable, repairs necessary to render it so must be economically feasible. Ordinarily, the cost of repairs should enhance the value so that the return on investment will be as great or greater than it would be if the repairs were not made. SFH property originally classified as suitable may be reclassified as unsuitable if physical damage occurs which is not economically feasible to repair. Where an SFH property is situated on land in excess of a minimum-adquate site as defined in § 1944.11 of Subpart A of Part 1944 of this Chapter, a determination must be made as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to classify an otherwise-suitable dwelling as unsuitable solely because it is situated on more than a minimum-adquate site. Consideration must be given to such things as zoning requirements, road or street access, and marketability of portions separately, if subdivided. If the excess land cannot be sold separately as a minimum-adqeuate site for another dwelling, the property may be sold as a single tract to an eligible applicant. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office) and charged to the inventory account as a nonrecoverable cost.

(c) *Authority for determining suitability.*

(1) *County Supervisor.* The County Supervisor will determine suitability of SFH and farm property, with the advice of the District Director or State Director if the County Supervisor is uncertain of the proper classification.

(2) *District Director.* The District Director will assist the County Supervisor in determining suitability of SGH and farm property as provided in paragraph (c)(1) of this Section.

(3) *State Director.* The State Director will determine suitability of all types of property other than farm or SFH with the recommendations of the District Director and will make the determination on farm or SFH property when requested to do so.

§ 1955.64 Securing, maintaining, and repairing inventory real property.

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE," or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of inventory property is preserved. Property will not be allowed to stand unsecured and unmanaged. SFH inventory property which is suitable for retention in the program will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to render it attractive to prospective purchasers, and to make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest possible time. Attention should be given to the interior and exterior of the structure(s), landscaping, driveways, and other site development in order to have a desirable and attractive property. For SFH, exceptions to this policy are authorized only when a prospective buyer has indicated a willingness to buy "as is" and make needed repairs with his/her own resources or a subsequent loan, or when the property is likely to be vandalized before it can be sold. Unsuitable SFH property will be repaired to meet the requirements as outlined in § 1955.103(d) of Subpart C of Part 1955 of this Chapter or will be subject to the restrictions on occupancy as set forth in § 1955.116 of Subpart C of Part 1955 of this Chapter. MFH property should be evaluated to determine if repairs are necessary or if a prospective buyer may wish to rehabilitate the property after purchasing it in "as is" condition.

(a) *Program authority.* (1) The County Supervisor and District Director have program authority to approve expenditures for securing, maintaining, and repairing inventory properties in an aggregate amount not to exceed $15,000 per property. If expenditures in excess of $15,000 per property are necessary and are economically feasible, the servicing official may request additional program authority from the State Director, outlining the purpose(s) for which the additional monies will be spent.

(2) The State Director or any member of the State Office staff duly designated by the State Director, has unlimited program authority to approve expenditures in connection with acquired property.

(b) *Contracting authority.* All contracts for securing, maintaining, and repairing acquired property will be handled in compliance with FmHA Instruction 1955–D (available in any FmHA office), subject to the limitations assigned to each position in FmHA Instruction 2024–A (available in any FmHA office). Costs incurred under this Section will be charged to the inventory account as nonrecoverable costs.

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority.* (1) *County Supervisor.* The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this Subpart.

(2) *State Director.* The State Director will select the management method to be used for property which secures (or secured) loans to organizations as defined in this Subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure an individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties, and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this Subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to that effect in accordance with § 1955.66(d) of this Subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain single-family housing properties, farms, and any other type of facility for which FmHA is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH, this plan should follow the guidance provided by Subpart C of Part 1930 of this Chapter. An audit of the borrower's records may be required if recent financial information is not

available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this Chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of a MFH project or five (5) or more single-family dwellings located in the same subdivision, the contractor must furnish an affirmative fair housing marketing plan on Form HUD 935.2 subject to FmHA's approval.

(2) *Authority to enter into management contracts.*

(i) The County Supervisor may enter into a management contract for basic service involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA Instruction 2024–A (available in any FmHA office).

(ii) A contracting officer in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for management or operation of a farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitation for State Office staff outlined in FmHA Instruction 2024–A (available in any FmHA office).

(iii) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specification of services.* All management contracts will provide for termination by either the contractor of the Govemnent upon 30 days written notice. Contracts providing for management of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications, that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparor or his/her associates from doing the repair work. Examples of both basic and more complex managmenet contracts are included in Exhibit A to FmHA Instruction 1955–D (available in any FmHA office).

(4) *Costs.* Costs incurred in management or property will be paid by preparation of SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMI. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property, costs will be charged to the inventory account as nonrecoverable.

§ 1955.66 Lease of real property.

When inventory property other than MFH properties cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee or FmHA on 30-day written notice unless Supplemental Provisions to an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupany, this will preclude its being leased, since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c).

(a) *Authority to approve lease of property.* (1) *Custodial property.* Custodial property may be leased pending foreclosure only after prior written approval by the State Director. After the State Director consents, the servicing official may execute the lease in behalf of FmHA as custodian.

(2) *Inventory property.* (i) *Single-family housing.* The county supervisor may approve the lease of single-family dwellings, using Form FmHA 1955–20, "Lease of Real Property."

(ii) *Multi-family housing.* MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with Subpart C of Part 1930 of this Chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* The County Supervisor may approve the lease of farm property. Supplemental provisions will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lessee will retain the right to harvest growing crops. Rental payment will be prorated between the Government and the purchaser of the property. The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property.

(iv) *Organization property other than MFH.* Only the State Director with the advice of appropriate National Office staff may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. Lease of utilities may require approval by State regulatory agencies. OGC assistance will be requested in preparation of the lease for property in this category.

(b) *Selection of lessees.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as an eligible applicant for purchase of the property and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount.

(1) *Farm property.* The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities and income potential to arrive at a market rent amount. While cash rent is preferred, lease of a farm on a crop-share basis may be approved if this is the customary method in the area. If the lease amount is to be a share of the crop, this must be outlined in detail in Supplemental Provisions attached to the lease in accordance with the FMI for Form FmHA 1955–20. The lessee will in these cases market the crop(s), provide FmHA with documented evidence of crop income, and pay the pro-rata share of the income to FmHA. The leasing official is responsible for seeing that crops are properly acounted for and collecting the lease money.

(2) *Single-family housing property.* If the lessee is a potential eligible applicant for a loan to purchase the house, the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of price of the house and income of the lessee, plus 1/12 of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will be leased for market rent for that type property in the area.

(d) *Property in flood or mudslide hazard area.* Inventory property located in an area identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FmHA the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease.

(e) *Lease with option to purchase.* For inventory property *only*, a lessee may be given the option to purchase. Terms of the option will be set forth as part of the lease in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the market value.

(f) *Costs.* The cost of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to FmHA Instruction 1955–D (available in any FmHA office). Expenditures on custodial property as limited in § 1955.55(c)(2) of this Subpart will be charged to the borrower's account as recoverable costs and on inventory property, they will be charged to the inventory account as nonrecoverable costs.

(g) *Security deposit.* A security deposit in at least the amount of one month's rent will be required from all lessees of SFH properties. For all other types of property, the leasing official may determine whether or not a security deposit will be required and the amount of the deposit with advice from the State Office staff if requested. Security deposits will be remitted to the Finance Office with Form FmHA 451–2. For custodial property, the deposit will be applied to the borrower's account as specified in paragraph (g)(1) of this Section. For inventory property, the deposit will be applied to the lease account. When the leasing official determines return of a security deposit is appropriate, it will be requested by memorandum to the Finance Office, Attn: Property Accounting Unit, with a copy of the Form FmHA 451–2 which transmitted it. For MFH projects, either the security deposit policy may be suspended or the deposits will be handled as follows:

(1) Form FmHA 444–9, "Multiple Housing Certification and Payment Transmittal," must be forwarded to the Finance Office for every tenant from whom a deposit is required (Miscellaneous Code 15). A notation will be entered under the tenant's name that it is a security deposit for inventory property, Advice No. ———, formerly owned by ————. The security deposit will be held in the inventory account.

(2) When a security deposits is to be returned, a memorandum request will be submitted to the Finance Office, Attn: Property Accounting Unit, with a copy of the Form 444–9 which transmitted it.

(3) If the policy is suspended and there are outstanding deposits which should be refunded, requests, will be handled as they would have been prior to acquisition.

(h) *Lease form.* Form FmHA 1925–20; "Lease of Real Property," prepared in accordance with the FMI, or other form approved by OGC, will be used to lease property by FmHA. ON receipt of a lease, the Finance Office will establish a lease account in the leasee's name.

(i) *Lease income.* Form FmHA 451.2 will be prepared and coded in accordance with the FMI instruction to transmit lease proceeds to the Finance Office.

(1) *Custodial property.* The proceeds from lease of custodial property will be applied first to any recoverable costs charged to the borrower's account then to the borrow's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense. OGC wil be consulted as to the procedure to be followed in each state and instruction will be given in a State Supplement.

(2) *Inventory property.* The proceeds from lease of inventory property will be applied to the lease account.

§ 1955.67 Payment of liens.

(a) If real estate was acquired subject to a lien, the FmHA official who approved the acquisition will authorize the payment of installments that may include escrow payments to the prior lienholder for taxes, if the property is taxable. Payment will be requested by preparation of SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMI. The payment will be charged to the inventory account as a nonrecoverable cost.

(b) If the State Director determines that paying a lien in full would be in the best interest of the Government, he/she will obtain the advice of OGC with respect to the procedures for paying the lien in full and having the mortgage released or assigned to the Government. The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and processing SF–1034 and Form FmHA 2024–1 to request payment to the lienholder which will be charged to the inventory account as a nonrecoverable cost.

§ 1955.68 Payment of taxes.

Property acquired by FmHA is subject to taxation by State and local political jurisdictions in the same manner and to the same extent as other property of the same kind, unless State law specifically exempts property owned by the Government from taxation. Where jurisdictions change their law or codes to begin taxing Government-owned property, only taxes accruing after the effective date of the change may be paid. A State supplement may be issued with the advice of OGC to cover individual state laws. The servicing official shall notify the approporiate taxing authority(ies) in writing when title to real estate is acquired by the Government and shall advised that claims for taxes, if applicable, during the Government's ownership should be billed to OGC at the County Office or District Office address. When inventory property is taxable, payment will be as follows:

(a) *Suitable property.* When property is clasified as suitable for program purposes, the servicing official will prepare SF–1034 and submit Form FmHA 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienholder will pay the taxes.

(b) *Surplus property.* When inventory property acquired under provisions of the CONACT is classified a surplus, taxes will be paid outlined in paragraph (a) of this section.

(c) *Unsuitable housing property.* When property is classified as unsuitable for program purposes and the value is limited to the extent that taxes which accrue before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

§ 1955.69 Insurance.

Insurance in force at the time property is acquired will not be cancelled; however, no additional premiums will be paid, except as follows:

(a) If organization-type property is operated by the Government after acquisition, workman's compensation coverage will be obtained. If the property is located in a flood-hazard area *and* operation of the property continues, flood insurance will be continued in force. Premiums will be paid by preparatioin of SF–1034 and submission of Form FmHA 2.24–1 and charged to the inventory account as a nonrecoverable cost.

(b) If there is an outstanding claim at the time of aquisition, it will be handled in accordance with Subpart A or B of Part 1806 of this Chapter (FmHA Instruction 426.1 or 426.2). If property was acquired subject to a prior lien, the servicing official shall advise the prior lienholder that the Government does not intend to carry insurance, except as provided in paragraph (a) of this section. If, however, the prior lienholder's mortgage requires the borrower to carry insurance, FmHA may provide the required insurance of necessary to prevent foreclosure by the prior lienholder.

§ 1955.70 Inspection of property.

The servicing official shall inspect property as necessary to protect the Government's interest. Inspection will be made in connection with travel for other purposes, wherever possible, and documented in the inventory file.

§ 1955.71 Vandalism or theft.

(a) Reporting. Willful damage to or theft of inventory or custodial property will be reported to local law enforcement officials by the servicing official. A written report will be sent to the State Director.

(b) *Other actions.* The servicing official will cooperate with local law enforcement officials to attempt to resolve the incident. This includes signing complaints and testifying at hearings or trials under the jurisdiction of the local law enforcement system. Civil actions and prosecution under Federal criminal statutes will be processed through OGC. The State Director after consulting OGC as necessary, will provide advice and assistance to the servicing official.

(c) *Repair of damage due to vandalism or theft.* Repairs necessary because of vandalism or theft will be accomplished on inventory property in accordance with § 1955.64 of this Subpart. Repairs of damage to custodial property will be limited as outlined in §1955.55(c) of this Subpart and obtained as outlined in § 1955.55(d) of this Subpart.

§ 1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).

By a Memorandum of Understanding, between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A to this Subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

§ 1955.73 Exception authority.

The Administrator of FmHA may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with the authorizing statute if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the appropriate program Assistant Administrator. Requests for execeptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, proposes alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.74 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws and to provide guidance to FmHA officials. State supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§§ 1955.75–1955.79 [Reserved]

§ 1955.80 Management of inventory chattel property.

Inventory chattel property will be disposed of as soon after acquisition as possible. Holding of chattel property for more than 120 days must be approved in writing by the State Director.

(a) *Care of inventory chattel property.* When the servicing official determines that inventory chattel property should be cared for by contract, the necessary services will be obtained in accordance with the provisions of this section and FmHA Instruction 1955–D (available in any FmHA office). If property was being cared for by contract prior to acquisition, a new contract is required for care while in inventory.

(b) *Contracting for services.* Services such as transportation, care storage, and harvest of crops will be obtained by use of Form FmHA 1955–60 in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(c) *Documenting and reporting inventory transactions.* The servicing official is responsible for documenting and reporting inventory chattel transactions.

(1) *Losses and increases.* Losses of inventory chattel property will be recorded on Form FmHA 462–1, "Record of the Disposition of Security Property," and maintained in the case file. Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property on the reverse of Form FmHA 455–13, "Report of Sale of Chattel Security," in the case file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955–50, "Advice of Inventory Property Sold," in accordance with FMI and Subpart C of this Part. Sales will also be recorded on Forms FmHA 462–1 and 455–13 in the case file.

§§ 1955.81–1955.100 [Reserved]

Subpart C—Disposal of Inventory Property

Introduction

§ 1955.101 Purpose.

This Subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights and chattels. It also covers the granting of easements and rights-of-way on inventory property and the disposal of surplus property through other agencies.

§ 1955.102 Policy.

(a) Inventory property which is suitable will be repaired if economically feasible and sold for its market value, best price obtainable for surplus property, as soon as possible.

(b) Priority will be given an eligible loan applicant. However, sales may be authorized for program purposes which differ from the purpose for which the original loan was made. For example, association or farm real estate may be subdivided into Rural Housing (RH) nonfarm tracts; a house which secured an Emergency (EM) loan may be sold as a Section 502 RH unit if suitable for that program; detached Labor Housing (LH) or Rural Rental Housing (RRH) units may be sold as individual dwellings; or LH projects may be sold as RRH projects.

(c) Inventory property which secured more than one type of loan may be sold under the conditions of the program most appropriate for the specific property and community needs so long as the price is not diminished. For example, property on a farm which secured both Labor Housing and Farm Ownership loans may be sold under the Consolidated Farm and Rural Development Act (CONACT) as farm property.

(d) Credit sales to ineligibles will be serviced as "Other Real Estate" (ORE) loans.

§ 1955.103 Definitions.

As used in this Subpart, the following apply:

(a) *Auction sale.* A public sale in which property is sold to the highest bidder in open verbal competition.

(b) *Approval official.* The FmHA official having loan and grant approval authority authorized under Subpart A of Part 1901 of this Chapter.

(c) *Credit sale.* A sale in which financing is provided to an applicant for the purchase of inventory property.

(d) *Decent, safe, and sanitary housing (DSS).* Standards required for the sale of Government acquired Single Family, Multi-Family and Labor Housing structures acquired pursuant to the Housing Act of 1949. "Decent, safe, and sanitary" housing unit(s) are structures which meet the requirements of Farmers Home Administration (FmHA) as described in Subpart A of Part 1924 of this Chapter for existing construction or if not meeting the requirements—

(1) Are structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical, and sewage disposal systems, and

(4) Meet the Thermal Performance Standards as outlined in Exhabit D of Subpart A of Part 1924 of this Chapter.

(e) *Eligible applicant.* One who meets the legal and administrative requirements for obtaining an FmHA program loan. An eligible Section 502 RH aplicant includes one who otherwise meets loan criteria but whose income *exceeds* the authorized income limit.

(f) *Ineligible applicant.* One who does not meet the requirements of FmHA program regulations for obtaining the particular FmHA program loan applied for, but who may be given financing under more stringent terms and conditions.

(g) *Inventory property.* Property for which title is vested in the Government and which secured an FmHA loan or which was acquired from another agency for program purposes.

(h) *Market value.* The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent, knowledgeable and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(i) *Negotiated sale.* A sale in which there is a bargaining of price and/or terms.

(j) *Organization property.* Property for which the following loans were made is considered organization property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation (AR); Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-in-Land Use (Grazing Association) (SL); loans to associations for Irrigation and Drainage and other soil and water conservation measures (ID); loans to Indian Tribes and Tribal corporations (IT); Biomass Energy (BE); Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this Subpart as multiple-family housing (MFH) property.

(k) *Participating broker.* A duly licensed real estate broker who has executed a listing agreement with FmHA.

(l) *Regular FmHA sale.* Sale made by other than sealed bid, auction or negotiation by FmHA employees or real estate brokers. Regular FmHA sales are made at market value unless administratively reduced.

(m) *Sealed bid sale.* A public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

(n) *Suitable property.* Property that could be used by a borrower to carry out the objectives of an FmHA loan program. Any property located in an area whose designation has been changed from rural to nonrural and which is otherwise suitable property will be considered as if it were still in a rural area.

(o) *Surplus property.* Real estatge acquired pursuant to the CONACT that is not suitable for sale to eligible applicants. It also includes suitable real property acquired pursuant to the CONACT which is not sold within three years of acquisition.

(p) *Unsuitable property.* Property acquired pursuant to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA property standards for existing construction or a property that is so poorly located it will not serve as an adequate residential unit.

§ 1955.104 Authorities and responsibilities.

(a) *Redelegation of authority.* FmHA officials will redelegate authorities to the maximum extent possible consistent with program requirements and available resources.

(1) The State Director may redelegate in writing any authority delegated to him/her in this Subpart, unless it is specifically excluded. These redelegations are authorized to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff; and to District Directors and County Supervisors.

(2) The District Director may redelgate in writing any authority delegated to him/her in this Subpart to an Assistant District Director.

(3) The County Supervisor may redelgate in writing any authority delegated to him/her in this Subpart to an Assistant County Supervisor, GS–7 or above, determined by the County Supervisor to be qualified.

(b) *Responsibility.* (1) National Office Program Directors are responsible for reviewing and providing guidance to State, District and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and for insuring compliance with FmHA regulations. For organization property, the State Office is responsible for approval of inventory property sales.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA regulations and State supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance.* The approval official has the authority to accept or reject bids or offers for inventory property, with the final sale price to coincide with loan approval limitations.

Consolidated Farm and Rural Development Act (CONACT) Real Property

§ 1955.105 Real Property affected (CONACT).

Sections 1955.106—1955.109 prescribe procedures for the sale of inventory real property which secured any of the following types of loans (referred to as CONACT property in this Subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Ecomonic Emergency (EE); Community Facility (CF); Water and Waste Disposal (WW); Resource Conservation and Development (RCD); Watershed (WS); Association Recreation (AR); Economic Opportunity Cooperative (EOC); Rural Renewal (RR); Water Facility (WF); Business and Industrial (B&I); Irrigation and Drainage (ID); Shift-in-land Use (Grazing Association) (SL); and loans to Indian Tribes and Tribal Corporations (IT).

§ 1955.106 Sale of suitable property (CONTACT).

CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to eligible applicants in accordance with FmHA regulations that apply to the appropriate loan program.

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955–40, "Notice of Real Property for Sale," is posted is the date the properety is offered for sale. If an eligible applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this Subpart and care should be taken to spell out eligibility criteria.

(b) *Real estate brokers.* The State Director may authorize use of real estate brokers to sell property to eligible applicants after determining that the use of brokers will be in the best interest of the Government. Selection and use of brokers will be accordance with § 1955.130 of this Subpart.

(c) *Sale price.* The sale price will be the market value.

(d) *Credit sale procedure.* The credit sale to eligible applicants will be processed as follows:

(1) Form FmHA 1955–45, "Standard Sales Contract-Sale of Real Property By the United States," will be used to document the offer and acceptance for regular FmHA sales. If otherwise acceptable, the contract should be immediately signed and accepted subject to approval of credit. Earnest money will accompany the offer in an amount not less than estimated purchaser's closing costs or ½ of 1 percent of the purchase price, whichever is greater. When more than one acceptable offer is received during business hours on the same day the order in which they will be considered will be decided by lot. For contracts initiated through real estate brokers, the broker will retain the earnest money until closing, until the credit sale is rejected or until the contract is cancelled. For regular sales initiated at FmHA Offices the earnest money in the form of a bank or postal money order, bank draft, certified check or cashier's check will be placed in the secured file for safe keeping until closing, until the credit sale is rejected or until the contract is cancelled. When the contract is cancelled due to borrower default the earnest money will be forwarded to the Finance Office (FO) as full liquidated damages for application to the General Fund.

(2) The interest rate will be the interest rate for the type loan being made which is in effect on the date of approval shown on Form FmHA 1940–1, "Request for Obligation of Funds."

(3) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(4) Title clearance and loan closing for the credit sale and any subsequent loan to be closed simultaneously *must be* the same as for an initial loan except that:

(i) Form FmHA 1955–49, "Quitclaim Deed," or other form of non-warranty deed approved by the Office of the General Counsel (OGC), will be used.

(ii) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(5) When the transaction is closed, the responsible FmHA official will send the original of Form FmHA 1955–50, "Advice of Real Estate Sold," to the Finance Office with a copy to the State Director.

§ 1955.107 Sale of surplus property (CONACT).

Surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable property which has been in inventory for three years must be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the authorized official and sold on eligible rates and terms. The basis for this redetermination must be documented in the running record.

(a) *Rates and terms.* Surplus property will be offered to ineligible applicants for cash or on terms of not less than a ten percent (10%) downpayment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured Business and Industry rate for profit corporations plus ½ percent; for community programs property the interest rate will be the current market rate for Community Programs. The interest rate for all other surplus property will be the current regular farm ownership loan rate plus ½ percent. The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offer has been received the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, a downpayment of not less than ten percent (10%) must be required and the

terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales to ineligible applicants will be identified as "Other Real Estate" (ORE) loans.

(b) *Sale by sealed bid or auction.* Surplus real property must first be offered for public sale by sealed bid or auction. The State Director will determine the method of sale, the minimum acceptable sale price and whether or not credit will be offered prior to the offering.

(c) *Negotiated sale.* If no acceptable bid is received either from a sealed bid sale or at a public action, the State Director may sell the property at the best price obtainable without further public notice by negotiating with interested parties including all previous bidders. The rates and terms offered through negotiation, will be within the limitations of paragraph (a) of this Section. A sale made through negotiation will be documented and accepted by the approval official on Form FmHA 1955–46, "Invitation, Bid and Acceptance-Sale of Real Property by the United States," and will be accompanied with an earnest money deposit not less than ten percent (10%) of the negotated price in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA plus any other conditions relating to acceptance. An offer for cash will be given preference if it is no more than 5% lower than the highest offer which requires FmHA to extend credit. Equally acceptable offers will be decided by lot.

(1) In negotiating a sale, offers may be solicited orally, by letter, or advertised in local newspapers. The persons interested in purchasing the property may be assembled for preliminary open negotiation. Solicitation and advertisement will include a time and date by which negotiation must have been completed.

(2) If an offer represents the best price obtainable, the approval official may accept it immediately; however, if a credit sale is involved this acceptance will be subject to confirmation of the purchaser's repayment ability for credit sales. If an acceptable offer is not negotiated by the date set, a new date may be set for further negotiations. The amount offered by one interested party will not be disclosed to any other party except when negotiation is by preliminary open negotiation. An offer stipulating that the offeror will purchase the property for a specified sum above the best offer made will not be considered.

(3) Advertising costs will be paid using Standard Form 1143, "Advertising Order," in accordance with FmHA Instruction 2024–F (available in any FmHA office). Standard Form 1034 will be used to pay for other purchases and services in accordance with FmHA Instruction 2024–E (available in any FmHA office).

(d) *Sale through real estate brokers.* The State Director may authorize the use of real estate brokers to sell surplus CONACT real property to ineligible applicants at the market value in accordance with § 1955.130 of this Subpart only after the conditions outlined in this paragraph have been met. Earnest money in the amount of the estimated closing costs or ½ of 1 percent of the purchase price whichever is greater, must accompany each offer. The conditions are:

(1) The State Director has determined that the property cannot be sold by FmHA employees,

(2) The property has been advertised for sale by sealed bid or auction and negotiation, and no acceptable bids or offers have been received, and

(3) Any negotiations have been terminated.

§ 1955.108 Processing and closing (CONACT).

(a) *Determining repayment ability and credit worthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan," or Form FmHA 1930–1, 1930–2 and 1930–3, known as the "Coordinated Financial Statement" (CFS), should be used for all eligible applicants unless the applicant has furnished all required informaion in another acceptable format. The form is discretionary for use with ineligible applicants. For orgnizational property, informaion will be provided which is similar to an application including financial information for the respect community loan program.

(b) *Form of payment.* Payments at closing will be made in the form of cash, cashier's check, certified check, postal or bank money order, of bank draft made payable to FmHA.

(c) *Farm real property.* Upon acceptance by the approval oficial, the Country Supervisor or District Director will provide the designated attorney or approved title insurance company with the necessary infomation to close the sale.

(d) *Organization real property.* Upon acceptance of the bid or offer, the State Director will forward the original Form FmHA 1955–45 or 1955–46, the names and legal description to be placed on the deed, the amount and terms of the note and mortgage, loan agreement or resolution and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction.

(e) *Earnest money.* Earnest money will be used to pay purchaser's closing costs with any balance of such costs being paid by the purchaser. The earnest money may be endorsed to the designated attorney or approved title company for distribution at closing. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's down payment.

(f) *Closing an reporting sales.* Title clearance, loan closing and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA 1955–49, "Quitclaim Deed," in accordance with §1955.41(a) of this Subpart. When the transaction is closed, the County Supervisor or District Director will prepare and submit Form FmHA 1955–50 in accordance with the Forms Manual Insert.

(g) *State supplement.* A State supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser will be issued with the consent and approval of OGC.

§ 1955.109 [Reserved]

Rural Housing (RH) Real Property

§ 1955.110 Sale of real estate that secured Rural Housing Loans (housing).

Sections 1955.111–1955.120 pertain to real property that secured loans made under the Housing Act of 1949, as amended, (RH property). Property which secured RH loans made under section 502 or 504 of the Housing Act of 1949, as amended, is referred to as SFH property. All other RH property is referred to as MFH property.

§ 1955.111 Property repair (housing).

(a) *Suitable property.* Suitable property will be secured, maintained and repaired in accordance with §1955.64 of Subpart B of Part 1955 of this chapter. If suitable RH property not meeting decent, safe and sanitary standards of §1955.103(d) of this Subpart is sold to an ineligible purchaser, the deed restriction provisions of §1955.116 of this Subpart will apply

(b) *Unsuitable property.* Sufficient maintenance to retain or enhance the

visual appeal of the property will be preformed provided that it is economically justified. When economically feasible, repairs will be made prior to offering the property for sale unless a prospective purchaser has indicated an interest in buying the property "as is" or the County Supervisor or District Director documents that the property would likely be vandalized prior to sale. If the property is not repaired to meet decient, safe and sanitary standards, the advertising requirements and deed restriction provisions outlined in §1955.116 of this Subpart apply; it will immediately be offered for sale "as is." If the property is not sold within 120 days of if the State Director determines a regular sale is not feasible, the structure may be offered for sale by sealed bid or auction or as chattel, to be removed from the site, in accordance with §1955.122 of this Subpart. If no offer is received, the structure(s) may be removed by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office) and the site offered for sale.

§ 1955.112 Method of sale (housing).

(a) *Sales by FmHA* . Sales customarily will be made by FmHA regular sale in accordance with §1955.114 and §1955.115 of this Subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this Subpart is of utmost importance when this method of sale is used. For FmHA this method will *always* be used unless another method is authorized by the Assistant Administrator, Housing.

(b) *Real estate brokers.* The services of real estate brokers for regular sale will be used as provided for in § 1955.130 of this Subpart in any County office with a caseload of five or more SFH properties in inventory at any one time during the calendar year. The use of real estate brokers by County Offices having less than five SFH properties in inventory at any one time during the calendar year is optional by the State Directory if staffing and workload permit sales directly by FmHA. When broker services for SFH are used the FmHA office will not conduct direct sales for the listed property but will refer inquiries to the broker of list of participating brokers unless an acceptable written offer has been received on a property prior to the time it has been determined available for sale and listed with brokers. Brokers may only be used for MFH with authorization of the Assistant Administrator for Housing.

(c) *Sealed bid or auction.* If the State Director determines that *unsuitable* SFH properties have been given adequate market exposure and that diligent sales efforts including use of real estate brokers have not produced buyers, he/she may authorize sale by sealed bid or public auction. *Suitable* SFH property will be sold by regular sale only unless the Assistant Administrator for Housing authorizes the use of the sealed bid or auction method. These authorities may not be redelegated. Indiscriminate use of these methods of sale could adversely affect other properties located in a subdivision. Therefore, the decision to use sealed bid or auction sale methods to dispose of single family housing units located in a subdivision must address the number of dwellings to be sold by these methods, the suitability of the entire subdivision for further FmHA financing and the effect such sales on the surrounding borrowers. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this Subpart and for conducting auction sales in § 1955.131 and § 1955.148 of this Subpart.

§ 1955.113 Sale price (housing).

The sale price for real property is based upon it market value. The market value should be based on the condition of the property at the time it is made available for sale. However, when a Section 515 Rural Rental Housing (RRH) credit sale is being made to a non-profit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the Government's investment or the market value, whichever is less.

(a) *SFH price reduction.* If SFH property has not sold after being actively marketed for at least 90 days the County Supervisor or District Director may administratively reduce the price by an amount not to exceed five percent (5%) if deemed to be in the best interest of the government or reappraise the property if additional market data indicates this action is warranted. Subsequent price reductions not to exceed 5% per reduction may be made in periods of not less than 90 days each. Administrative price reduction can be made without changing the SFH appraised value. Reduction will be documented in the running record. Active written offers, otherwise acceptable except for price, will be retained and accepted in order of highest price if equal to or greater than the reduced price.

(b) *MFH price reduction.* For multi-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions of price for multi-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

§ 1955.114 Sales steps for suitable property (housing).

After repairs, if any, are completed, suitable property will be offered for sale as outlined in this section. The appraisal should be updated to reflect repairs and improvements, if any, and Form FmHA 1955–40, "Notice of Real Property for Sale," for SFH property or other appropriate notice for MFH property will be prepared. Suitable property will be sold by regular sale only unless the Assistant Administrator, Housing authorizes another method. If the State Director determines that suitable properties have been given adequate market exposure and that diligent sales efforts including the use of real estate brokers have not produced purchasers, he/she may request the Assistant Administrator, Housing to authorize sale by sealed bid or public auction.

(a) *Single family housing.* The sale price will be established in accordance with § 1955.113 of this Subpart. The County Supervisor will either offer the property for regular sale or list it with real estate brokers for regular sale under the provisions of § 1955.112 of this Subpart. Properties will be offered or listed, by use of Form FmHA 1955–40, unless FmHA has on hand a signed offer to purchase a specific property. The date the form is posted or listed with participating brokers is the effective date that the offer for sale has begun and the date it is mailed to participating brokers is the effective date of listing. Offers and listings will provide for sales to both eligible or ineligible applicants. However, all SFH property will be available for purchase only by eligible applicants for the first 15 days from the date of offering or listing. During this 15 day period offers will be accepted from ineligible applicants and held until the beginning of the business day following the 15 day period when they will be considered in the order received. If not sold, it may then be purchased by either eligible or ineligible buyers on a first-come, first-served basis. However, for written offers received during business hours on the same day, eligible

applicants will be given first priority, then cash offers will take precedence over credit sales, and then equally acceptable offers will be decided by lot. Credit sales to eligible applicants will be in accordance with the provisions of Subpart A of Part 1944 of this Chapter. Sales to ineligibles will be for cash or as credit sales at rates and terms outlined in § 1955.118 of this Subpart.

(b) *Multi-family housing.* The sale price will be established in accordance with § 1955.113 of this Subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this Subpart. The sale information will include the sale price and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director. The sale date should be set to allow adequate time for advertising and review of applications. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official. An offeror may withdraw an offer prior to the sale date, but on the sale date, all offers from applicants determined eligible for the type of loan being offered will be considered. Offers will be placed in a receptacle and one offer drawn. Award will be made to the offeror drawn. The sucessful offeror will be notified immediately by letter by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, the selection of the successful offeror was by lot and therefore is not appealable, and their earnest money will be returned. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form FmHA 1955–40, or other appropriate form designated for MFH property, will be used and the property sold to the first eligible applicant meeting the respective program requirements. Any other method of sale must receive the prior written authorization of the Assistance Administrator, Housing.

§ 1955.115 Sales steps for unsuitable property (housing).

The appropriate FmHA Office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect repairs and improvements, if any, and Form FmHA 1955–40 for SFH property or other appropriate notice for MFH property will be prepared.

(A) *Single family housing.* Sales steps will be the same as for suitable SFH property, as provided in § 1955.114(a) of this Subpart, except all purchasers shall be considered as ineligible and sales must be for cash or credit with any credit extended to be on ineligible rates and terms as provided in § 1955.118 of this Subpart. If an unsuitable SFH property has not sold after 120 days from being offered for sale or listed with brokers, consideration should be given to using a sealed bid or auction sale method. Use of the sealed bid or auction method without attempting a regular sale may be considered in special circumstances, e.g., where structures have been substantially destroyed by fire with the remaining value being only in the land. Special circumstances may also indicate that the structures should be sold as chattel (salvage) when authorized by the State Director. Sealed bid sales of unsuitable SFH property should be completed and closed within 90-days of the authorization to use this method. Auction sales should be completed and closed within 120 days of the authorization to use this method. The advertising requirements and deed restrictions of § 1955.116 of this Subpart apply to unsuitable properties which do not meet FmHA decent, safe and sanitary standards.

(b) *Multi-family housing.* Sales steps will be the same as for suitable MFH property as provided in § 1955.114(b) of this Subpart except that all applicants will be considered ineligible and the rates and terms will be on the basis of § 1955.118 of this Subpart. Additionally, if cash offers are received they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell unsuitable MFH property, authority to use that method of sale must be requested from the Assistant Administrator, Housing. Inventory files including information on the acquisition, marketing efforts taken and management of the property; other pertinent information and a memorandum covering the facts of the case and recommendations of the State Director must be submitted for review.

§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).

(a) *Notices and advertising.* If the inventory RH property has a dwelling or MFH unit which does not meet decent, safe and sanitary standards as defined in § 1955.103(d) of this Subpart, any "Notice of Real Property For Sale," "Notice of Sale," or any other advertisement used in conjunction with advertising the sale must contain the following notice:

> The structure presently on this property does not meet the "Decent, Safe, and Sanitary Housing" standards as defined by the Farmers Home Administration. Prior to being used for residential purposes, the structure must be restored or repaired to:
>
> (1) Be structurally sound and habitable,
>
> (2) Have a potable water supply,
>
> (3) Have functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems, and
>
> (4) Meet the Thermal Performance Standards for existing construction as outlined in Exhibit D to Subpart A of Part 1924 of Title 7 of the "Code of Federal Regulations" (CFR).

(b) *Sales agreements.* If a structure in RH inventory does not meet decent, safe and sanitary standards, the Form FmHA 1955–45 or Form FmHA 1955–46 used in conjunction with the sale must indicate the type of deficiencies that exist and must contain the following clause:

> This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed to the purchaser will contain a convenant binding the purchasers and the property which will restrict the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is structurally sound and habitable, has a potable water supply, has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems, and meets the Thermal Performance Standards as outlined in Exhibit D, 7 CFR Part 1924, Subpart A. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e).

(c) *Quitclaim deed.* The following or similar restrictive clause adapted for use in an individual State pursuant to a State supplement approved by OGC must be added to the Quitclaim Deed for properties with dwellings which do not meet the definition of decent, safe, and sanitary:

> Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) convenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the unit(s) is structurally sound and habitable, has a potable water supply, has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems and meets the Thermal Performance

Standards as outlined in Exhibit D of 7 CFR Part 1924 Subpart A. This convenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a convenant running with the subject property and as an equitable servitude. This convenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned Standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and this covenant will thereafter be of no further force or effect.

(d) *Release of restrictive clause.* A State supplement outlining the procedures for releasing the decent, safe, and sanitary convenant will be issued with the advice and approval of OGC.

§ 1955.117 Processing credit sales to eligible applicants (housing).

The following provisions apply to all credit sales to eligible applicants:

(a) Form FmHA 1955–45 will be used to document the offer and acceptance for regular FmHA sales. Contract acceptance is normally made prior to processing Form FmHA 1910–4, "Application for Rural Housing Assistance (Non-Farm Tract)," for SFH property with the provision that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application. Earnest money, in the amount of FmHA's estimate of purchaser's closing costs, will accompany the offer made on Form FmHA 1955–45 unless the provisions of paragraph (g)(2) of this section, below, apply. For contracts initiated through real estate brokers, the brokers will retain the earnest money until closing, until the credit sale is rejected, or the contract is cancelled. For contracts not involving real estate brokers the earnest money in the form of bank or postal money order, certified check or cashier's check will be placed in the secured file for safekeeping until closing, until the credit sale is rejected, or the contract is cancelled.

(b) When the contract is cancelled due to offeror default, the earnest money will be forwarded to the Finance Office as full liquidated damages for application to the General Fund.

(c) The FmHA regulations pertaining to the type of credit being extended will be followed in making credit sales to eligible applicants. All MFH credit sales may be made for up to 100 percent of the current market value of the security less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 5 percent of the purchase price as a cash down payment unless otherwise waived by the Administrator under § 1955.150 of this Subpart. All credit sales of RRH, RCH and LH properties will be subject to prepayment and use restrictions specified by the respective program requirements.

(d) Form FmHA 1940–1 will be used to approve a credit sale even though no obligation of funds in involved.

(e) When a downpayment is required, it will be collected at closing, identified by advice number, purchaser's name and case number, and remitted to the Finance Office with Form FmHA 451–2 in accordance with Subpart B of Part 1951 of this Chapter.

(f) The current interest rate for the type of credit being extended will apply (low or moderate, above-moderate RH; RRH, etc.) as determined upon the date of approval of the assistance on Form FmHA 1940–1.

(g) Title clearance, loan closing and property insurance requirements for a credit sale and any subsequent or additional loan closed simultaneously with the credit sale will be the same as for a program loan of the same type except:

(1) The property will be conveyed by "Quitclaim Deed" in accordance with § 1955.141 (a) of this Subpart.

(2) Earnest money deposited will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. The earnest money may be endorsed to the designated attorney or approved title company for applicable distribution. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the designated attorney or the approved title insurance company the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

§ 1955.118 Processing sale to ineligible purchasers (housing).

The following provisions will apply to cash or credit sales to ineligible purchasers:

(a) Eligible applicant provisions of § 1955.117 (a), (b), (d), (e), and (g) also apply to ineligible purchasers. However, the following modification on instruments, if applicable, will be made and initialed by both the applicant and the approval official:

(1) On the promissory note, the covenants relating to graduation to other credit, personal occupancy, and restrictions on leasing will be deleted by lining through and will be initialed by the obligor(s).

(2) On the security instrument (mortgage or deed of trust) the covenants relating to graduation to other credit, personal occupancy, and restrictions on lease will be deleted by lining through and will be initialed by the mortgagor(s).

(b) The section 502 RH above-moderate interest rate will be charged on all credit sales of SFH property to ineligible purchasers. The current section 515 RRH interest rate plus ½ percent will be charged for all other types of housing credit sales.

(c) RH property will be offered for sale to ineligible applicants for cash or may be sold on terms of not less than a ten percent (10%) downpayment and with the balance of the purchase price amortized over no more than ten years with amortized monthly payments. However, the term will *never* be longer than the period for which the property will serve as adequate security. If the State Director determines that more favorable credit conditions are required to facilitate the sale of inventory property, alternate terms may be authorized as follows:

(1) Loans on SFH may be amortized using a 20 year factor and loans on MFH may be amortized using a 30 year factor, *and*

(2) The balance of the loan must be paid in full (balloon payment) not later than the tenth (10th) anniversary of the loan.

(d) Title clearance, loan closing and property insurance requirements for a credit sale will be the same as for a program loan except:

(1) The property will be conveyed by "Quitclaim Deed" in accordance with § 1955.141(a) of this Subpart.

(2) The purchaser will pay closing costs. Earnest money deposited will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser.

(3) The County Supervisor or District Director will provide the designated attorney or the approved title insurance company the necessary information for closing the sale. The assistance of OGC will be requested to provide closing

instructions in exceptional or complex cases and for all MFH sales.

(e) A State supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser will be issued with the consent and approval of OGC.

§ 1955.119 Payment of discount points (housing).

To effect regular sale of inventory SFH property, the State Director may authorize the payment by FmHA of not more than three discount points for non-FmHA loans. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA official. Points will not be paid to reduce the interest rate to be paid by the purchaser. The payment will be deducted from the funds to be received by FmHA at closing.

§ 1955.120 [Reserved]

Chattel Property

§ 1955.121 Sale of acquired chattels (chattel).

Sections 1955.122–1955.125 prescribe procedures for the sale of all acquired chattel property except real property rights. The State Director is authorized to sell acquired chattels by auction, sealed bid, regular sale or, for perishable items and crops, by negotiated sale. The State Director may redelegate authority to any qualified FmHA employee.

§1955.122 Method of sale (chattel).

Acquired chattels will be sold as expeditiously as possible using the method(s) considered most appropriate. If the chattel is not sold within 180 days of acquisition, assistance will be requested as outlined in §1955.143 of this Subpart.

(a) *Regular sale.* Chattels may be sold by FmHA employees at market value to eligible applicants. Form FmHA 440–21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale.

(b) *Auctions.* Section 1955.148 of this Subpart provides detailed guidance on auctions applicable to the sale of chattels, as supplemented by this section.

(1) *Established public auction.* An established public auction is an auction conducted at a facility that is widely advertised and that is held on a regularly scheduled basis. This method of sale is particularly suited for the sale of commodities, farm machinery and livestock. No additional public notice of sale is required other than that commonly used by the facility. This is the preferred method of disposal.

(2) *Other auctions.* Other auctions, whether conducted by FmHA employees or fee auctioneers, are suitable for on-premises sales, for sale of dissimilar chattels and for the sale of chattels in conjunction with the auction of real property. A minimum of five days prior public notice will be made prior to the date of auction.

(c) *Sealed bid sales.* Section 1955.147 of this Subpart provides detailed guidance on sealed bid sales applicable to the sale of chattels. When it is believed that financing will have to be provided through a credit sale this method has advantages over auction sales. It requires, however, additional steps in the event any established minimum price is not obtained.

(d) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA 1955–47, "Bill of Sale 'A'—Sale of Government Property") will be kept in the County or District Office inventory file. Sales proceeds will be handled in accordance with Subpart B of Part 1951 of this Chapter utilizing Form FmHA 1955–50, and Form FmHA 451–2, "Schedule of Remittance." A State supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on negotiated sales and to insure compliance with State laws.

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this Chapter for the appropriate program for which a loan would otherwise be made. Credit sales to ineligible purchasers may be offered on terms of not less than ten percent (10%) downpayment with the remaining balance amortized over a period not to exceed five years. The interest rate for ineligible purchasers will be the annual FP Operating Loan rate plus 1%. The Farm and Home Plan or CFS, Form FmHA 440–32, "Request for Statement of Debts and Collateral," and any financial statement considered appropriate may be used to show financial capability.

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. If full payment is not received at the time of sale, the offer or purchase will be documented by Forms FmHA 1955–46 or by Form FmHA 1955–45 where the chattel is sold jointly with real estate by regular sale.

(c) *Transfer of title.* Title will be transferred to a purchaser in accordance with § 1955.141(b) of this Subpart.

(d) *Reporting sale.* Sales will be reported in accordance with § 1955.142 of this Subpart.

(e) *Reporting and disposal of inventory property not sold.* Refer to § 1955.143 and § 1955.144 of this Subpart for additional guidance in disposing of problem property.

§ 1955.124 Sale with inventory real estate (chattel).

Inventory chattel property may be sold with inventory real estate if a higher aggregate price can be obtained. Proceeds from a joint sale will be applied to the respective inventory accounts based on the value of the property sold. Form FmHA 440–21 will be used to determine the value of the chattel property. The offer for the sale of the chattels will be documented by incorporating the terms and conditions of the sale on Forms FmHA 1955–45 or 1955–46, and may be accepted by the appropriate approval official based upon the combined final sale price.

§ 1955.125 [Reserved]

Use of Contractors To Dispose of Inventory Property

§ 1955.126 Selection and use of contractors to dispose of inventory property.

Sections 1955.127–1955.132 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA Instructions 1955–D and 2024–A (available in any FmHA office) are applicable for procurement of the nonpersonal services.

§ 1955.127 Specification writers and inspectors.

The State Director may authorize the County Supervisor or District Director to procure specification writers and/or inspection services to facilitate the

repair and sale of inventory real property for any office acquiring inventory real property at a rate greater than two monthly or having five or more properties at one time requiring these services. With the approval of the appropriate Assistant Administrator, the State Director may authorize the procurement of these services when these conditions do not exist. The decision should be based on office workload, capability of personnel and availability of personnel from other offices to provide temporary assistance. Specification writers and inspectors and any legal entities in which they have an interest will not be eligible to perform subsequent related work for which specifications were drawn or inspections are contemplated.

§ 1955.128 Appraisers

The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sales of inventory real or chattel property. (Fee appraisals will only be authorized by the Assistant Administrator, Housing, for MFH properties when unusual circumstances preclude the use of a qualified FmHA MFH appraiser.) The decision should be based on availability of comparables, capability and availability of personnel and the number and type properties (such as large farms and business property) requiring valuation. Contract appraiser should be "designated" (i.e., an appraiser designated by major appraisal organizations, e.g., Society of Real Estate Appraisers, American Institute of Real Estate Appraisers, American Society of Appraisers, American Right of Way Association, Appraisal Institute of Canada and Independent Appraisers). Appraisers will be restricted for a period of one year of the appraisal date from purchasing the property they have appraised.

§ 1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

(a) The primary use of the structure included in the sale is other than residential; and

(b) The business broker is duly licensed by the respective state; and

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed by Exhibit C to FmHA Instruction 2024–A (available in any FmHA office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they are doing business.

(a) *Type of listing agreement.* The State Director may elect to authorize use of open listings, exclusive listings or combinations thereof during any calendar year as follows:

(1) *Exclusive listing.* An exclusive listing agreement provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA office awarding the contract within a defined area and for a specified property or type property. Since the commission rate is pre-established, additional criteria will be specified in the solicitation together with the numerical weighting system to be used (usually 1–100). Responses will be calculated on the basis of criteria such as personal qualifications, membership in Multiple Listing Services, previous dealings with FmHA, advertising plans, innovative promotion methods proposed, and financial capability. The terms and conditions of this agreement are prescribed in Form FmHA 1955–43, "Exclusive Real Property Master Listing Agreement." The responsibilities of the broker under the exclusive listing agreement exceed those of the open listing agreement.

(2) *Open Listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed consistent with the terms and conditions of Form FmHA 1955–42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published at least once yearly, concurrently with a notice to all brokers in the counties served by the FmHA office informing brokers that sales services are being requested. The advertising will be substantially in accordance with the example given in Exhibit B (available in any FmHA office) to this Subpart. The open listing agreement may be consummated at any time during the year but must be effective prior to the broker showing the property.

(b) *Listing notices.* Form FmHA 1955–40 will be used to provide brokers with notice of initial listing, withdrawals, price change, term change, relisting, sale cancellation, etc.

(c) *Priority of offers.* Offers will be given priority in the order received; however, all offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA. Additional priority rules for specific categories of property are:

(1) *Suitable SFH.*

(i) During the first 15 days listed, offers will be considered from eligible applicants only.

(ii) After the first 15 days listed, offers will be considered from both eligible and ineligible applicants with offers from eligible applicants taking priority over equally acceptable offers from ineligible applicants received on the same business day, and with cash offers taking priority over offers requiring FmHA credit to ineligibles.

(2) *Suitable MFH.* Offers will be considered from eligible applicants only.

(3) *Unsuitable SFH or MFH.* Applicants with cash offers will be given priority over offers requiring FmHA credit.

(4) *Suitable CONACT.* Offers will be considered from eligible applicants only.

(5) *Surplus CONACT.* Offers will be considered from eligible or ineligible applicants, with cash offers taking priority over offers requiring FmHA credit to ineligibles.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale. However, these offers will be held by FmHA pending any administrative price reduction, prior sale, withdrawal, or expiration of offer.

(e) *Earnest money.* Earnest money will be retained by the broker until contract closing, withdrawal, cancellation or rejection by FmHA. If the purchaser fails to comply with any terms of the purchase agreement the earnest money will be delivered to FmHA as full liquidated damages and remitted to the Finance Office for application to the General Fund.

(f) *Commission.* The broker's commission is contingent on the closing of the sale and will not be paid until the sale is closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, the broker's salesperson(s), to persons living in his/her or salesperson's immediate household or to legal entities in which the broker of salesperson(s) have an interest. Commissions will be paid at closing only if sufficient cash to cover such commission is paid by the purchaser. Otherwise the commission will be paid by the appropriate FmHA official completing a Standard Form

1034 and submitting Form FmHA 2024–1, "Miscellaneous Payment System," to the Finance Center and charged as a non-recoverable cost to the inventory account. A uniform fee or commission schedule, by property type, will be established by the State Director within a given sales area and will not exceed commissions paid for similar type of services provided by the broker to other sellers of similar real property. (The percentage normally decreases as the value of the property increases over $100,000.) The State Director, without authority to redelegate, may authorize fixed amount bonuses for special-effort property, such as property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period where it is believed an added bonus will create additional efforts by the broker to sell the property. Commissions for sealed bids procured through brokers may be authorized by the appropriate Program Assistant Administrator upon written request by the State Director.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA shall certify to nondiscrimination practices as provided in Forms FmHA 1955–42 and 1955–43 (available in any FmHA office). In addition, all brokers participating in the sale of the property shall sign the nondiscrimination certification on Form FmHA 1955–45.

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in § 1955–148 of this Subpart and procured by competitive negotiation under the contracting authority of Exhibit C to FmHA Instruction 2024–A (available in any FmHA office).

(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* The commission to be paid is normally the customary auctioneer's fee for the area for the type of property being sold. Payment will be made in the same manner as provided for brokers in § 1955.130(f) of this Subpart.

(c) *Auctioneer Restriction.* The auctioneer; his/her sales agents, cooperating brokers or persons living in his, her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

§ 1955.132 [Reserved]

General

§ 1955.133 Nondiscrimination.

(a) *Title VI Provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, of if FmHA extends credit and the property then becomes subject to Title VI, the buyer will sign Form FmHA 400–4, "Assurance Agreement." The instrument of conveyance will contain the following statement:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

(b) *Affirmative Fair Housing Marketing Plan.* Exclusive listing brokers or auctioneers selling SFH properties having five or more properties in a subdivision listed or offered for sale at one time will prepare and submit to FmHA an acceptable Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for each such subdivision.

(c) *Equal Housing Opportunity Logo.* All FmHA and contractor sale advertisements will contain the equal housing opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) *Property under contract.* If a bid or offer has been accepted by the FmHA and through no fault of either party, the property is lost or damaged as a result of fire, vandalism or an act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by FmHA, FmHA will reappraise the property. The reappraised value of the property will serve as the amount FmHA will accept from he purchaser. However, if the actual loss based on the reduction in market value of the property as determined by FmHA is less than $500, payment of the full purchase price is required. In the event the two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money will be returned to the offeror.

(b) *Existing defects.* FmHA does not provide any warranty on property sold from inventory. Subsequent loans may be made to eligible purchasers to correct defects.

§ 1955.135 Taxes on inventory real property.

Where FmHA owned property is subject to taxation, taxes will be prorated between FmHA and the purchaser as of the date the title is conveyed in accordance with the conditions of Form FmHA 1955–45 or Form FmHA 1955–46. The purchaser will be responsible for paying all taxes due and payable after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name and the description of the property sold. Only assessments for property improvements (water, sewer, curb and gutter, etc.) due and payable as of the date property is sold will be paid by FmHA for all types of inventory property. At the closing, taxes and assessments due to be paid by FmHA will be paid by voucher, if the local taxing authority will accept payment at that time, or will be deducted from the selling price. However, for eligible borrowers other than MFH who lack payment ability, FmHA may pay the prorated taxes and assessments by Standard Form 1034, when later due and payable, in lieu of deduction from the selling price at closing.

§ 1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).

(a) Prior to a final decision on some disposal actions, an environmental assessment must be made and when necessary, an environmental impact statement. Detailed guidance or when and how to prepare an EA or an EIS is found in Subpart G of Part 1940 of this Chapter. Assessments must be made for those proposed conveyance that meet one of the following criteria:

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in $1955.137 of this Subpart.

(2) The FmHA approval official has reason to believe that conveyance would result in a change in use of the real property. For example, farmland would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use

within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Secretary's Memorandum 9500–2, "Statement on Land Use Policy," in connection with the conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains; or the expansion of boundaries of existing settlements.

§ 1955.137 Real property located in special areas or having special characteristics.

(a) *Real property located in flood, mudslide hazard, wetland, or coastal barrier areas.* (1) *Use restrictions.* Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," require the conveyance instrument for inventory property in floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law, as determined by the FmHA official responsible for the conveyance. Applicable restrictions will be incorporated into quitclaim deeds in format similar to that contained in § 1955.116 (c) of this Subpart with the consent and approval of OGC. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA servicing official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released by the State Director. A listing of these restrictions will be included in the notices required in paragraph (a)(2) of this section.

(2) *Notice of hazards.* Acquired real property located in an identified special flood or mudslide hazard area as defined in Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) will not be sold for residential purposes unless determined by the County Supervisor or District Director to be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants). Prior written notice of the specific hazard must be given to prospective purchasers. The notice will be prepared in accordance with the following:

(i) *Property offered for sale by FmHA.* The County Supervisor or District Director will inform prospective purchasers at the time of the first inquiry and in any notice of public sale that the property is located in a special flood, mudslide hazard or wetland area and specify any use restrictions resulting from this location. The County Supervisor or District Director will also prepare and deliver a written notice to the prospective purchaser at the time the bid or offer to purchase is signed by the purchaser. The prospective purchaser will acknowledge the receipt of the notice. Exhibit A (available in any FmHA office) of this Subpart may be used as a guide for preparing the notice and the acknowledgment. The acknowledgment will be placed in the County or District Office inventory file.

(ii) *Property offered for sale through real estate brokers or auctioneers.* If real estate brokers or auctioneers are engaged to sell inventory property, they must notify prospective purchasers in writing that the property is located in a special flood, mudslide hazard or wetland area and specify any use restrictions resulting from this location.

(A) When sending Form FmHA 1955–40 or other notice to the brokers or auctioneers listing property for sale, the County Supervisor or District Director will attach a written notice and acknowledgment as a guide in meeting this requirement. Exhibit A to this Subpart may be used for this purpose.

(B) After the prospective purchaser signs the acknowledgment, the broker or auctioneer will forward it to the County Supervisor or District Director, as appropriate, with Form FmHA 1955–45 or Form FmHA 1955–46.

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided by both eligible and ineligible purchasers at closing. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use.

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act *no* credit sales will be provided for property located in coastal barrier areas and the adjacent wetlands, marshes, estuaries, inlets and near shore waters.

(b) *Historic preservation.* (1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," the FmHA official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See Subpart E of Part 1940 of this Chapter for additional guidance.) To determine the former, the current listing of the Register is reviewed. To determine the latter, the State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria are met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historic/archeological importance or has apparent significant architectural features or is similar to other FmHA properties that have been determined to be eligible.

(iii) An environmental assessment is required prior to a decision on the conveyance.

When consultation is not required based upon the above criteria, the responsible FmHA official shall note in the inventory file running record the basic reason why no consultation was necessary. For example, the running record may indicate the property to be conveyed may be a standard, 10-year old, single family house, a check may have been made with a local historical society on a less obvious property or the property may have been previously cleared.

(2) If the result of the consultations with the SHPO is that a property may be eligible or that it is questionable, an official determination must be obtained from the Secretary of the Interior. The State Office should be contacted for assistance in obtaining this determination. The National Office's Program Support Staff is also available to assist the State Office.

(3) If a property is listed on the National Register or is determined eligible for listing by the Secretary of Interior, the FmHA official responsible for the conveyance must consult with the SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be conducted in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests. The Advisory Council on Historic Preservation must be consulted by the State Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached

(4) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to potential bidders or purchasers through a similar notice procedure discussed in § 1955.137(a)(2).

§ 1955.138 Property subject to a redemption rights.

If under State law FmHA's interest may be sold during any applicable redemption period:

(a) The State Director is authorized to sell FmHA's interest if there is no apparent likelihood of the property being redeemed during the redemption period and the amount of any credit sale is within his/her approval authority. In this instance, the property will be sold "as is" and no loan or subsequent loan may be approved during the redemption period except as needed to protect the security interest of FmHA. For sales on eligible terms, consideration should be given to making a subsequent loan to bring the house to program standards at the expiration of the redemption period.

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recoverable under the State's provisions of redemption.

(c) The signed original statement will be filed in the purchaser's County or District Office case file or the inventory file, as applicable.

(d) If real estate brokers or auctioneers are engaged to sell the property, the County Supervisor or District Director will inform them of the redemption rights of the borrower and the conditions under which the property may be sold.

(e) The State Director, with prior approval of OGC, will issue a State supplement incorporating the requirements of this section and providing additional guidance appropriate for the State.

§ 1955.139 Disposition of real property rights.

(a) *Easements or rights-of-way.* The State Director is authorized to convey easements or rights-of-way for roads, utilities and other appurtenances as follows:

(1) Easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values must be considered, including any appropriate adjustment to the property's market value, and adequate consideration received for any reduction in value.

(2) Easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this Chapter.

(3) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) *Mineral and water rights, mineral lease interests, air rights, agricultural or other leases.* (1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, development rights, agricultural and other lease interests will be sold with the surface land and will not be sold separately. If the land is to be sold in separate parcels, any rights or interests that apply to each parcel will be included with the sale.

(2) Lease or royalty interests not passing by deed will be assigned to the purchaser when property is sold. The County Supervisor or District Director, as applicable, will notify the lessee or payor of the assignment. A copy of this notice will be furnished to the purchaser.

(3) The value of such rights, interests or leases will be considered when the proporty is appraised.

§ 1955.104 Sale in parcels.

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property guidance will be requested from the National Office for all properties other than RHS projects. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of the property must not change its character from suitable to unsuitable or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this Chapter. Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. If propoety is to be subdivided, a plan will be provided by the State Director protecting the FmHA security interest when the subdivided portions are sold. The plan will provide for partial releases based upon 110% of the portion of the outstanding loan prorated to the released property

(b) *Grouping of individual properties.* The State Director may authorize the combining of two or more individual properties into a single parcel for sale as one block if it is determined this will facilitate the sale.

§ 1955.141 Transferring title.

(a) *Real property.* Real property will be conveyed by "Quitclaim Deed," Form FmHA 1955–49, or other form of nonwarranty deed approved by OGC, executed by the State Director. This authority may not be redelegated. FmHA, the designated attorney or the approved title company may prepare the granting instrument for real property. Any FmHA expenses involved will be paid by Standard Form 1034 and charged to the inventory account or may be paid from any downpayment where the funds are being disbursed by the designated attorney or approved title company at the closing.

(b) *Chattel.* Chattel property will be conveyed by Form FmHA 1955–47, "Bill of Sale 'A' (Sale of Government Property)," executed by the County Supervisor, District Director or State Director. Form FmHA 1955–47 is normally prepared by FmHA.

(c) *Additional real property documentation.* For SFH suitable real property sold to eligible applicants the County Supervisor or District Director will also provide the purchaser the following documents or statements:

(1) A termite certificate from a reliable firm.

(2) Local authority certification, if customary in the State, that the individual water and sewage systems are functional and adequate for property not being served by public water and sewer systems.

For MFH property, documentation will be in accordance with appropriate program procedures.

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser should prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. Exhibit C to Subpart C of Part 1930 will be followed in processing the request for a rent increase. In processing the rent increase the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest

credit and rental assistance may be granted to eligible applicants purchasing MFH properties in accordance with the provisons of Exhibit B of Subpart E of Part 1944 and Exhibit E of Subpart C of Part 1930 of this Chapter, respectively.

§ 1955.142 Reporting sale.

When the transaction is closed and the conveying instrument has been delivered, the appropriate FmHA official will prepare and distribute Form FmHA 1955–50 in accordance with the FMI. Real or chattel property which has been disposed of by other means than sale, including total loss or destruction, will be reported in the same manner.

§ 1955.143 Report on inventory property not sold.

For any unsuitable or surplus real or chattel property not sold within 18 months (6 months for chattel) of acquisition the County Supervisor or District Director will send the inventory file, advertisements, and a summary of the facts covering the eforts to sell the property to the State Director for further guidance. If the property is not sold within an additional 6 months (3 months for chattel), the State Director will send the package to the appropriate Assistant Administrator for advice.

§ 1955.144 Disposal of surplus property to, through, or acquired from other agencies.

(a) *Property which cannot be sold.* If unsuitable or surplus real or chattel property cannot be sold, the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal agencies or State or local governmental entities through the General Services Administration (GSA). Chattel property will be reported to GSA using Standard Form 120, "Report of Excess Personal Property," with transfer documented by Standard Form 122, "Transfer Order Excess Personal Property." Real property will be reported to GSA using Standard Form 118, "Report of Excess Real Property," Standard Form 118A, "Buildings, Structures Utilities and Miscellaneous Facilities (Schedule A)," Standard Form 118B, "Land (Schedule B)" and Standard Form 118C, "Related Personal Property (Schedule B)," with final disposition documented by a "Receiving Report," executed by the recipient with original forwarded to the Finance Office and a copy retained in the inventory file. Forms and preparation instructions should be obtained from the appropriate GSA Regional Office by the State Office.

(b) *Urban Homesteading Program (UH).* Section 810 of the Housing and Community Development Act of 1979, as amended, authorizes the Secretary of Housing and Urban Development (HUD) to pay for acquired FmHA single family residential properties sold through the HUD–UH Program. Local governmental units may make application through HUD to participate in the UH Program. State Directors will be notified by the Assistant Administrator, Housing, when local governmental units in their States have obtained funding for the UH Program. The notification will provide specific guidance in accordance with the "Memorandum of Agreement between the Farmers Home Administration and the Secretary of Housing and Urban Development" dated October 2, 1981.

(c) *Real property acquired from GSA.* Sale of real property acquired from GSA under Section 414(a) of the Housing and Urban Development Act of 1969 will be in accordance with this Subpart as it pertains to suitable property within the program for which the property was accepted. All notices, advertising, sales agreements and deeds will contain the following language or similar language approved by the OGC serving the State Office:

> The real property being offered for sale or being conveyed by this instrument is for use to the maximum extent practicable to provide housing and related facilities to be occupied by families of low or modest income only, in accordance with the provisons of Section ——[1] of the Housing Act of 1949, as amended. In the event the property is initially conveyed to an entity other than a public body and is used for any propose other than the aforesaid purpose within a period of not less than 30 years form the date of conveyance, it shall revert to the United States pursuant to section 414(b) of the Housing and Urban Development Act of 1969 [40 USC § 484b(b)]. However, the Secretary and the Administrator of General Services, after expiration of the first 20 years of conveyance, may approve the use of the property for other purposes by prior written consent.

§ 1955.145 Land acquisition to effect sale.

Land acquisition which is necessary to effect sale of inventory real property must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation or to make suitable property more suitable. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be unsuitable for program purposes due to location and where it is economically feasible to relocate the structure thereby making it suitable, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining unsuitable parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined unsuitable for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* Easements, rights-of-way or other interests in land may be acquired to cure title defects, encroachments or in order to make otherwise unsuitable property suitable if economically feasible.

§ 1955.146 Advertising.

(a) *General.* The success of any sales effort is highly dependent on vigorous advertising which covers the potential market. The primary advertisement means available to the County Supervisor, District Director or State Director are newspaper advertisements in accordance with FmHA Instruction 2024–F (available in any FmHA office), public notices using Form FmHA 1955–41, "Notice of Sale," "synopsis" advertising in accordance with § 1955.157 of FmHA Instruction 1955–D (available in any FmHA office), and notification of known interested parties. Other innovative means are encouraged, e.g., use of a display board in the FmHA office with photographs and Form FmHA 1955–40 posted together to solicit applicant and broker interest; posting of Form FmHA 1955–41 at employment centers; door-to-door distribution of the notice to apartment dwellers. An example of newspaper advertising is provided in Exhibit B (available in any FmHA office) to this Subpart. Advertisement costs will be paid by using Standard Form 1143. Appropriate FmHA officials will make sure that, where contractually required, brokers and auctioneers provide adequate, timely advertising. When property is being sold by FmHA or by use of open listings with brokers, it is the approval official's responsibility to insure the adequate advertising of each property.

(b) *Large value and complex properties.* Advertising for MFH, B&I

[1] Insert "502" or "515" as appropriate.

and other large value or complex properties should also be placed in appropriate newspapers and publications designed to reach the type of particular purchasers most likely to be interested in the inventory property. The State Director will assist the District Director in determining the scope of advertising necessary to adequately market these properties. Advertising for MFH and other complex properties must also include appropriate language stressing the need to obtain and submit complete application materials for the type program involved.

(c) *Racial and socio-economic considerations.* In accordance with the policies set forth in paragraph 1901.203(c) of Subpart E of Part 1901 of this Chapter the approval official will make a special effort to insure that those prospective purchasers in the marketing area who traditionally would not be expected to apply for housing assistance because of existing racial or socio-economic patterns are reached.

(d) *Rejected application.* If an application for SFH is being rejected because income is too high, a statement should be included in the rejection letter that inventory properties may be available for which they may apply.

§ 1955.147 Sealed bid sales.

Before the sealed bid sale, the appropriate FmHA official will determine and document the minimum sale price, if any, and whether or not credit will be offered. Credit may be offered to facilitate the sale; however, the term will *never* be longer than the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA 1955–46 with an accompanying deposit of not less than ten percent (10%) of the bid in the form of a cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. The bid will be considered delivered when actually received at the FmHA office in a sealed envelope marked as follows:

"Sealed Bid Offer

Date of Bid opening _____
FmHA Advice No. _____
Property Address or Location _____

(a) *Opening bids.* Sealed bids will be held in a secured file before bid opening which will be at the place and time specified in the notice. The bid opening will be public and usually held at the FmHA office. The County Supervisor, District Director or State Director or his/her designee will open the bids with at least one other FmHA employee present. Each bid received will be tabulated showing the name and address of the bidder, the amount of the bid, the amount and form of the deposit, and any conditions of the bid. This tabulation will be signed by the County Supervisor, District Director or State Director or his/her designee and be retained in the inventory file.

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. However, when substantially equal bids (cash bid not more than 5% lower than the highest credit bid, but meeting the minimum established price) are received, cash bids will be given preference, otherwise equal bids will be selected by public lot drawing. The successful bid will be accepted by signing Form FmHA 1955–46. The approval officer will give a copy of the form to the successful bidder or his/her representative. If the bidder or his/her representative is not present at the bid opening, the form will be sent by certified mail, return receipt requested, to the bidder. The bid deposit of the successful bidder will be used at closing to be applied first to the purchaser's closing costs with any balance then applied to the downpayment or in the case of a cash sale to be deducted from the funds required from the successful bidder at closing.

(c) *Unsuccessful bids.* Deposits of unsuccessful bidders will be returned by certified mail with letter of explanation, return receipt requested. If there were no acceptable bids, the letter will advise each bidder of any anticipated negotiations for the sale of the property and deposits will be returned.

(d) *Disqualified bids.* Any bid that does not comply with the terms of the offer will be disqualified. Minor deviations and defects in bid submission may be waived by the FmHA official approving the sale.

(e) *Failure to close.* If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages and will be remitted to the Finance Office with Form FmHA 451–2 for application to the General Fund. However, if a credit sale complying with the FmHA notice is an element of the offer and FmHA disapproves the credit application, then the bid deposit will be returned to the otherwise successful bidder. Upon determination that the successful bidder will not close, the State Director may authorize either another sealed bid or auction sale or direct negotiations with the next highest bidder, all available unsuccessful bidders, or other interested parties.

(f) *No acceptable bid.* Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with § 1955.107(c) of this Subpart except that the established minimum sale price shall remain unchanged.

§ 1955.148 Auction sales.

Before an auction, the State Director, with advice of the National Office for organizational property, will determine and document the minimum acceptable price, if any, whether or not a credit sale will be offered and the minimum downpayment; and whether an FmHA employee or contract auctioneer will conduct the auction sale. The State Director may authorize the use of a professional auctioneer if the value of the property or the complexity of the sale make it advisable, if no qualified FmHA employee will be available or if otherwise considered in the best interest of the Government. This will be handled by contract in accordance with FmHA Instructions 1955–D and 2024–A (available in any FmHA office). Chattel property may be sold at a public auction that is widely advertised and held on a regularly scheduled basis without solicitation. At the auction, successful bidders will be required to make a deposit of not less than ten percent of their bid in the form of cashier's check, certified check, postal money order or bank draft payable to FmHA or to the contracting auctioneer, if applicable. Cash and personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. The high bid will be reduced to writing on Form FmHA 1955–46. Where credit sales are to be allowed, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential bidders. This may include submission of letters of credit or financial statements prior to the auction. When the highest bid is lower than the minimum amount acceptable to FmHA, negotiations should be conducted with the highest bidder or, in turn, next highest bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default the approval official will remit the bid

deposit to the Finance Office with Form FmHA 451–2 for application to the General Fund. The bid deposit will be remitted to the Finance Office *only* when the bidder defaults, otherwise, pursuant to agreement between the approval official and the purchaser, it will be applied to the closing costs or downpayment, or will be deducted from the selling price in a cash sale. The closing will be conducted in accordance with the procedures prescribed in this Subpart for ineligible purchasers according to the type property and program involved.

§ 1955.149 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws and to provide guidance to FmHA officials. State supplements applicable to MFH, B&I, and CP must have prior approval of the National Office. Request for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§ 1955.150 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this Subpart or address any omission of this Subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest or the immediate health or safety of the tenants or the community if there is no adverse effect on the Government. The Administrator will exercise this authority only at the request of the State Director and recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 2942, 5 U.S.C. 301, Sec. 10. Pub. L. 93–357, 88 Stat. 392, 7 CFR 2.23; 7 CFR 2.70, 29 FR 14764, 32 FR 9850)

Dated: March 2, 1984.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 84–15120 Filed 6–5–84; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 84–045]

General Conference Committee of the National Poultry Improvement Plant; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Announcement of meeting.

SUMMARY: This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan concerning poultry improvement regulations in 9 CFR Parts 145 and 147.

DATES: The meetings will be held June 25, 1984 (10:00 A.M.–12 noon), June 26 and 27, 1984 (9:00 A.M.–(5:00 P.M.), and June 28, 1984 (9:00 A.M.–2:00 P.M.). Written comments may be filed with the committee before or at the time of the meeting.

ADDRESSES: The meetings will be held at the Radisson St. Paul Hotel, 11 East Kellogg Boulevard, St. Paul, Minnesota. Written comments may be mailed to Dr. Irvin L. Peterson, Acting Senior Coordinator, National Poultry Improvement Plan, APHIS–VS, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments received may also be inspected at this address between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, (301) 436–5140.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the National Poultry Improvement Plan (NPIP) was established by Departmental Regulation No. 1043–8 dated July 30, 1982. The purpose of the Committee is to mark recommendations to the Department concerning the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

At the meeting consideration will be given concerning whether to recommend to the Department that the following changes be made in the regulations in 9 CFR Parts 145 and 147:

1. Include the Arizona Group of organisms as part of the Salmonella Group.

2. Add the enzyme-labeled immunosorbent assay test (ELISA) as one of the official tests for pullorum and typhoid diseases and mycoplasmal diseases, and the microagglutination and microhemagglutination inhibition tests as alternative blood tests for my coplasmal diseases.

3. Add the testing of egg yolks for antibodies as one of the official monitoring tests for the *Mycoplasma gallisepticum* and *M. synoviae* classifications for multiplier-type chicken breeding flocks.

4. Evaluate the effectiveness of the sanitation program for chicken breeding flocks classified as "U.S. Sanitation Monitored" when salmonella are isolated from products.

5. Add a program which would provide for a classification of breeding flocks which have had a negative test for avian influenza and have met certain other requirements (to be determined).

6. Add a program which would provide for the recognition of a State when the State is meeting certain requirements (to be determined) for the control of *Mycoplasma gallisepticum* in its poultry flocks.

7. Include a periodic monitoring blood test for *Mycoplasma gallisepticum* after the initial test of turkey breeding flocks.

8. Add a program which would provide a classification for turkey breeding flocks when they meet certain requirements (to be determined) for the control of *Mycoplasma synoviae.*

9. Add a program which would provide the classification of "U.S. Sanitation Monitored" for turkey breeding flocks.

10. Modify the present requirements to permit waterfowl, exhibition, and game bird primary breeding flocks to be classified as "U.S. Pullorum-Typhoid Clean" with less than an annual blood test of 300 birds if they are located in a "U.S. Pullorum-Typhoid Clean State," and meet certain other requirements (to be determined).

11. Add procedures for conducting the agar gel immunodiffusion precipitin test.

12. Clarify existing provisions for electing members to the General Conference Committee of the National Poultry Improvement Plan.

The meeting will be open to the public. The sessions on June 26, 27, and 28, 1984, will include the delegates to the biennial National Plan Conference, who represent State officials and poultry industry personnel from the 47 cooperating States. Written statements concerning these and other matters may be filed with the committee before or at the time of the meeting.

Further information concerning the meeting may be obtained from and written statements may be forwarded to Dr. Irvin L. Peterson, Acting Senior coordinator, National Poultry Improvement Plan, APHIS–VS, Room 828, Federal Building 6505 Belcrest Road, Hyattsville, MD 20782, (301–436–5140).

Written comments which are received may be inspected in Room 828 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Dated: June 1, 1984.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 84-15189 Filed 6-5-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket N. 84-ANM-11]

Proposed Alteration of VOR Federal Airways and Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to redescribe several Restricted Areas, alter the Continental Control Area in connection with these Restricted Areas and alter the descriptions of V-253 and V-200 in the vicinity of the Utah, NV, test range to widen the corridor west of Salt Lake City, UT. The changes would permit more flexibility for traffic maneuvering between the restricted areas thereby reducing delays.

DATES: Comments must be received on or before July 20, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84-ANM-11, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, WA 98108.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 84-ANM-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular N. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123, § 71.151 and § 73.64 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73). In Part 71 (§ 71.151), to: (1) amend R-6404A, B and C; (2) revoke R-6402 and R-6406 and (3) add R-6402A and B and R-6406A and B to the Continental Control Area. In Part 73 (§ 73.64), to: (1) alter the descriptions of Restricted Areas R-6404A and B, R-6405, R-6407; (2) revoke R-6402 and R-6406 and (3) add R-6402A and B, R-6404C, R-6406A and B, referred to as the Utah test and training range. The Salt Lake City Air Route Traffic Control Center (ARTCC) has requested these changes, to improve traffic flow west of Salt Lake City. This action would permit greater flexibility for maneuvering and expediting traffic, reduce controller workload and increase safety in the Salt Lake City terminal area. Coincidental with these revisions, in Part 71 (§ 71.123), the descriptions of V-253 and V-200 would be altered. In addition, the restricted areas in the Utah test range would be expanded in order to contain Ground Control Intercept, unmanned aerospace vehicle missions, air-to-air/surface gunnery, bombing, air refueling, artillery firing and munitions disposal. Sections 71.123, 71.151 and 73.64 of Parts 71 and 73 of the Federal Aviation Regulations were republished in FAA Order 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, VOR Federal airways, Continental control area, and Restricted areas.

The Proposed Amendments

PART 14—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123, § 71.151 and § 73.64 of Part 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

§ 71.123 [Amended]

V-253 [Amended]

By deleting the words "From Fairfield, UT, INT Fairfield 326° and Salt Lake City, 265° radials; 24 miles, 85 MSL Bonneville; 5 miles, 85 MSL, 90 MSL Lucin, UT;" and substituting the words "From Lucin, UT;".

V-200 [Amended]

By deleting the words "From Fairfield, UT," and substituting the words "From Bonneville, UT; via INT Bonneville 084° T (067° M) and Fairfield, UT, 326° T (310° M) radials; Fairfield;".

§ 71.151 [Amended]

R-6402 Dugway Proving Ground, Dugway, UT [Revoke]

R-6402A Dugway Proving Ground, Dugway, UT [New]

R-6402B Dugway Proving Ground, Dugway, UT [New]

R-6404A Hill AFB Range South, UT [Amend]

By deleting the words "Range South".

R-6404B Hill AFB Range North, UT [Amend]

By deleting the words "Range North"

R-6404C Hill AFB Range East, UT [Amend]

By deleting the words "Range East".

R-6406 Wendover, UT [Revoke]

R-6406A Wendover, UT [Add]

R-6406B Wendover, UT [Add]

§ 73.64 [Amended]

R-6402 Dugway Proving Ground, Dugway, UT [Revoked].

R-6402A Dugway Proving Ground, Dugway, UT [New].

Boundaries. Beginning at lat. 40°25'00" N., long. 112°56'00" W.;
to lat. 40°25'00" N., long. 113°07'00" W.;
to lat. 40°20'20" N., long. 113°07'00" W.;
to lat. 40°20'20" N., long. 113°20'02" W.;
to lat. 39°55'00" N., long. 113°26'40" W.;
to lat. 39°52'00" N., long. 113°27'00" W.;
to lat. 39°49'00" N., long. 113°08'00" W.;
to lat. 39°44'00" N., long. 113°08'00" W.;
to lat. 39°46'00" N., long. 112°56'00" W.;
to lat. 40°00'00" N., long. 112°43'00" W.;
to lat. 40°13'00" N., long. 112°43'00" W.;
to the point of beginning.
Designated altitudes. Surface to FL 580.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, Dugway Proving Ground, UT.

R-6402B Dugway Proving Ground, Dugway, UT [New]

Boundaries. Beginning at lat. 40°13'00" N., long. 112°43'00" W.;
to lat. 40°16'00" N., long. 112°43'00" W.;
to lat. 40°25'00" N., long. 112°50'00" W.;
to lat. 40°25'00" N., long. 112°56'00" W.;
to the point of beginning.
Designated altitudes. 100 feet AGL to FL 580.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, Dugway Proving Ground, UT.

R-6404A Hill AFB, UT [Revised]

Boundaries. Beginning at lat. 41°11'30" N., long. 112°45'30" W.;
to lat. 41°16'00" N., long. 113°50'00" W.;
to lat. 41°08'30" N., long. 114°02'30" W.;
to lat. 40°55'30" N., long. 114°02'30" W.;
to lat. 40°55'00" N., long. 114°00'00" W.;
to lat. 40°55'00" N., long. 112°50'30" W.;
to lat. 41°01'00" N., long. 112°39'00" W.;
to lat. 41°07'00" N., long. 112°39'00" W.;
to the point of beginning.
Designated altitudes. Surface to FL 580.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6404B Hill AFB, UT [Revised]

Boundaries. Beginning at lat. 40°55'00" N., long. 112°50'30" W.;
to lat. 40°55'00" N., long. 114°00'00" W.;
to lat. 40°49'00" N., long. 113°40'00" W.;
to lat. 40°52'00" N., long. 112°57'00" W.;
to the point of beginning.
Designated altitudes. Surface to 13,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6404C Hill AFB, UT [New]

Boundaries. Beginning at lat. 41°16'00" N., long. 113°50'00" W.;
to lat. 41°11'30" N., long. 114°15'00" W.;
to lat. 40°59'30" N., long. 114°15'00" W.;
to lat. 40°55'30" N., long. 114°02'30" W.;
to lat. 41°08'30" N., long. 114°02'30" W.;
to the point of beginning.
Designated altitudes. 100 feet AGL to FL 280.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6405 Wendover, UT [Revised]

Boundaries. Beginning at lat. 40°39'00" N., long. 114°00'00" W.;
to lat. 40°23'00" N., long. 114°15'00" W.;
to lat. 39°40'00" N., long. 114°15'00" W.;
to lat. 39°23'00" N., long. 114°00'00" W.;
to lat. 39°23'00" N., long. 113°19'00" W.;
to lat. 39°46'00" N., long. 112°56'30" W.;
to lat. 39°44'00" N., long. 113°08'00" W.;
to lat. 39°49'00" N., long. 113°08'00" W.;
to lat. 39°52'00" N., long. 113°27'00" W.;
to lat. 39°55'00" N., long. 113°26'40" W.;
to lat. 39°55'00" N., long. 113°48'00" W.;
to lat. 40°00'00" N., long. 113°48'00" W.;
to lat. 40°00'00" N., long. 114°00'00" W.;
to the point of beginning.
Designated altitudes. 100 feet AGL to FL 280.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6406 Wendover, UT [Revoked]

R-6406A Wendover, UT [New]

Boundaries. Beginning at lat. 40°39'00" N., long. 113°00'00" W.;
to lat. 40°39'00" N., long. 114°000'00" W.;
to lat. 40°17'00" N., long. 114°00'0.0" W.;
to lat. 40°20'20" N., long. 113°49'00" W.;
to lat. 40°20'20" N., long. 113°07'00" W.;
to lat. 40°25'00" N., long. 113°07'00" W.;
to lat. 40°25'00" N., long. 112°56'00" W.;
to lat. 40°29'00" N., long. 113°00'00" W.;
to the point of beginning.
Designated altitudes. Surface to FL 280.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6406B Wendover, UT [New]

Boundaries. Beginning at lat. 40°39'00" N., long. 113°00'00" W.;
to lat. 40°29'00" N., long. 113°00'00" W.;
to lat. 40°25'00" N., long. 112°56'00" W.;
to lat. 40°25'00" N., long. 112°50'00" W.;
to the point of beginning.
Designated altitudes. 100 feet AGL to FL 280.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6407 Dugway Proving Ground, Dugway, UT [Revised]

Boundaries. Beginning at lat. 40°20'20" N., long. 113°20'02" W.;
to lat. 39°55'00" N., long. 113°26'40" W.;
to lat. 39°55'00" N., long. 113°48'00" W.;
to lat. 40°00'00" N., long. 113°48'00" W.;
to lat. 40°00'00" N., long. 114°00'00" W.;
to lat. 40°17'00" N., long. 114°00'00" W.;
to lat. 40°20'20" N., long. 113°49'00" W.;
to the point of beginning.
Designated altitudes. Surface to FL 280.
Time of designation. Continuous.
Controlling agency. FAA, Salt Lake City ARTCC.
Using agency. Commander, Dugway Proving Ground UT.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Exectuive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on May 29, 1984.

B. Keith Potts,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-15109 Filed 6-5-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release Nos. 33-6535; 34-20945; FR-19; File No. S7-21-84]

Business Combination Transactions, Proposed New Registration Form; Foreign Registrants

Correction

In FR Doc. 84-13292, beginning on

page 20852, in the issue of Thursday, May 17, 1984, make the following correction:

1. On page 20852, in the second column, in the heading, in the second line of the docket line, "S7–212–84" should read "S7–21–84".

2. On page 20862, in the first column, in Item 12 paragraph (a)(2), in the fifth line, after "S–X" insert ", provide the information required by Rule 10–01 of Regulation S–X".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–84–1162; FR–1867]

Mutual Mortgage Insurance and Rehabilitation Loans; Mortgage Insurance Endorsement on Proposed or a New Dwelling in a New Subdivision or Improved Area

Correction

In FR Doc. 84–13889 beginning on page 21938 in the issue of Thursday, May 24, 1984, make the following correction:

§ 200.163 [Corrected]

On page 21942, third column, § 200.163, fourth line, "(a)" should have read "(c)".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300089; PH-FRL 2596–5]

Dibutyltin Dilaurate, Ethyl Vinyl Acetate, Nitrile Rubber Modified Acrylonitrile-Methylacrylate Copolymers, Polyethylene, Polypropylene, Tetrafluoropolyethylene; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that dibutyltin dilaurate, ethyl vinyl acetate, nitrile rubber modified acrylonitrile-methylacrylate copolymers, polyethylene, polypropylene, and tetrafluoropolyethylene be exempted from the requirement of a tolerance when used as ingredients in plastic ear tags and tail devices for ruminants and swine in pesticide formulations. These proposed regulations were requested by NOR-AM Chemical Co.

DATE: Written comments must be received on or before July 6, 1984.

ADDRESS: By mail, submit written comments identified by the document control number [OPP–300090] to: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401, M St., SW., Washington, D.C. 20460. In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS–767), Environmental Protection Agency, Rm. 724A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protectionl Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716D CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7700).

SUPPLEMENTARY INFORMATION: At the request of NOR-AM Chemical C., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for dibutyltin dilaurate, ethyl vinyl acetate, nitrile rubber modified acrylonitrile-methylacrylate copolymers, polyethylene, polypropylene, and tetrafluoropolyethylene when used as inert ingredients in plastic ear tags and tail devices for ruminants and swine.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvent such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredients: Dibutyltin dilaurate, ethyl vinyl acetate, nitrile rubber modified acrylontrile-methylacrylate copolymers, polyethylene, polypropylene, and tetrafluoropolyethylene.

Name and address of requester: NOR-AM Chemical Co., 4311 Lancaster Pike, P.O. Box 2867, Wilmington DE 19805.

Bases for approval: The ear tags and tail devices are to be used as controlled-release pesticide-dispensing devices, the active ingredient (AI) being incorporated into plastic matrix in the same manner as flea and tick collars that are made for domestic pets.

The AI leaches out of the tag to become a surface residue on the animals. The residues are then spread by the animals' habit of licking, grooming, and rubbing against each other. These activities can be expected to result in oral exposure as well as dermal exposure.

The plastic matrixes and their other incorporated components, such as stabilizers and dyes, are not expected to result in residues in meat and milk by reason of their solid form and insoluble nature and their mode of application as formed controlled-release insecticide dispensers, which are attached to the animal or its harness. Residues, including those of monomers or polymers in meat and milk, if any, are not expected to be of toxicological concern.

1. Dibutyltin dilaurate is cleared under 21 CFR 175.105, 175.300 and 177.1680 as an indirect food additive.

2. Ethyl vinyl acetate copolymer is cleared under 21 CFR 175.300, 176.180, 177.1200, 177.1210, and 177.1350 as an indirect food additive.

3. Nitrile rubber modified acrylonitrile-methylacrylate copolymers are cleared in 21 CFR 176.170 and 177.1480 under indirect food additive status.

4. Polyethylene is cleared under 21 CFR 172.615 as a direct food additive, under 21 CFR 178.3570 as an indirect food additive, and under 21 CFR 573.780 as an animal feed additive.

5. Polyproplene is cleared in 21 CFR 175.105, 175.300, and 177.1520 under indirect food additive status.

6. Polytetrafluoroethylene is cleared under 21 CFR 177.1550 as an indirect food additive.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, these ingredients are useful and do not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains these inert ingredients, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP-300089]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural Commodities, Pesticides and pests.

Dated: May 17, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Thefore, it is proposed that 40 CFR 180.1001(e) be amended by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * *		
Dibutyltin dilaurate (CAS Registry No. 77-58-7).		Component of plastic slow release tag.
* * * * *		
Ethyl vinyl acetate (CAS Registry No. 24937-78-8).		Component of plastic slow release tag.
* * * * *		
Nitrile rubber modified acrylonitrile-methylacrylate (CAS Registry No. 27012-62-0) conforming to 21 CFR 177.1480.		Component of plastic slow release tag.
* * * * *		
Polyethylene (CAS Registry No. 9002-88-4) conforming to 21 CFR 172.615.		Component of plastic slow release tag.
* * * * *		
Polyproplene (CAS Registry No. 9003-07-0).		Component of plastic slow release tag.
* * * * *		
Polytetrafluoroethylene (CAS Registry No. 9002-84-0).		Component of plastic slow release tag.
* * * * *		

[FR Doc. 84-14488 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1629

Bonding of Recipients

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require any non-governmental recipient of Corporation funds to obtain a bond or bonds to indemnify such recipients against loss resulting from the fraud or lack of integrity, honesty or fidelity of directors, officers, employees or agents of such recipients. The Corporation's records include a number of instances, ongoing and recent, in which its funds, granted to a recipient, have been lost through dishonest behavior on the part of persons associated with the recipient. This regulation would provide protection for recipients and the Corporation against such acts and ensure that scarce resources are not misappropriated.

DATE: Comments must be received on or before July 6, 1984.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: This proposed rule would implement a policy articulated by the Corporation's Board at its meeting in Savannah, Georgia on March 30, 1984, that all persons who handle Corporation funds granted to recipients be bonded against loss due to fraud or dishonesty. Instances of dishonesty such as misappropriation of funds for personal use, embezzlement of funds, personal use of program credit cards, falsification of travel and housing documents, defalcation of petty cash funds, misuse of client trust funds and embezzlement of interest payments involving programs in various parts of the country have come to the attention of the Corporation throughout its existence. Sanctions have ranged from reprimands through discharge to successful criminal prosecution. While in some cases restitution was made, in others, where the programs were not bonded, they absorbed the losses. If a mandatory bonding requirement had been in place at the time of such incidents, the programs would not have been forced to bear the loss. Many programs currently carry coverage against fraud and dishonesty. In addition, the Corporation's *Audit and Accounting Guide* has for some time considered fidelity coverage to be a basic internal control procedure which all programs should establish. The purpose of this regulation is to make mandatory an important protection for the limited funds available to serve eligible clients.

This proposed rule is authorized by the mandate in the Legal Services Corporation Act, as amended, to provide economical and effective legal assistance of eligible clients, and to insure the compliance of recipients and their employees with the provisions of

the Act, regulations, rules and guidelines promulgated by the Corporation.

Section 1629.1 of the proposed rule would require that a program carry bond coverage of a value equal to at least twenty-five (25) percent of the program's previous year annualized LSC funding level. The Corporation's review of incidents giving rise to such loss by programs indicate that this required level will provide adequate protection against risk of loss through dishonesty, without being unreasonably burdensome.

Section 1629.2 of the proposed rule would require that at least those directors, officers, employees and agents who handle funds or property of the program shall be covered by the required bond or bonds to protect the program against loss due to acts of fraud and dishonesty on the part of such persons.

Section 2629.3 provides guidance concerning what constitutes the handling of funds or property. Generally, handling means a relationship to the funds or property which gives rise to a risk of loss. Such risk of loss can occur through physical contact with cash, etc. However, persons who from time to time perform counting, packaging, tabulating, messenger or similar duties of an essentially clerical character involving physical contact with funds or other property would not be "handling" when they perform these duties under conditions and circumstances where risk of loss is negligible because of factors such as close supervision and control or the nature of the property.

Risk of loss may also arise through the power to exercise contact or control, or the power to transfer property. If a person meets such criteria, this proposed rule would require that he or she be covered by the bond, whether individual or blanket. Persons who actually disburse funds or property or sign checks or similar instruments should be considered as being in this category. Whether other persons who may influence authorize or direct disbursements or the signing or endorsing of checks or similar instruments would be considered to be "handling" funds or other property should be determined by reference to the risk of loss arising from the particular duties or responsibilities of such persons.

A person with supervisory authority over those described above may be considered "handling" under the terms of the proposed rule. However, to the extent that only general responsibility for the conduct of the business affairs of the program is involved, including such functions as approval of contracts, authorization of disbursements, auditing of accounts and similar responsibilities, such persons would be considered to be "handling" only when the facts of the particular case raise the possibility that funds or other property of the program are likely to be lost in the event of fraud or dishonesty. The mere fact of general supervision would not necessarily, in and of itself, mean that such persons are "handling."

In § 1629.4, the proposed rule defines "fraud" and "dishonesty" as used in this Part. That section makes it clear that the major criterion is risk of loss to the program, and that the required bond must provide for recovery for loss even though the act giving rise to the loss by the program does not result in personal gain for the person committing the act.

Section 1629.5 describes permissible forms of bonds, making it clear that blanket or schedule bonds are appropriate as well as individual bonds which aggregate at least the required level of twenty-five (25) percent of the program's annualized funding.

Section 1629.6 provides that programs which choose to bond individuals rather than to carry a blanket bond for the program shall fix the amount required annually pursuant to a formula provided in that section.

Section 1629.7 provides that the programs must report bond coverage in their applications for refunding, beginning with FY 1985.

List of Subjects in 45 CFR Part 1629

Legal services, bonding.

For the reasons set out in the preamble a new 45 CFR Part 1629 is proposed to be added as follows:

PART 1629—BONDING OF RECIPIENTS

Sec.

1629.1 General.
1629.2 Persons required to be bonded.
1629.3 Criteria for determining handling.
1629.4 Meaning of fraud or dishonesty.
1629.5 Form of bonds.
1629.6 Amount of individual bonds.
1629.7 Effective date.

Authority: Sections 1006(b)(1)(A) and 1007(a)(3), Pub. L. 93–355, as amended, Pub. L. 95–222 (42 U.S.C. 2996e(1)(A) and 2996f(3)).

§ 1629.1 General.

(a) If any program which receives Corporation funds is not a government, or an agency or instrumentality thereof, such program shall carry fidelity bond coverage at a minimum level of at least twenty-five (25) percent of the program's annualized LSC funding level for the previous fiscal year.

(b) A fidelity bond is a bond indemnifying such program against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers, agents, directors or other persons holding a position of trust with the program.

§ 1629.2 Persons required to be bonded.

(a) Every director, officer, employee and agent of a program who handles funds or property of the program shall be bonded as provided in this Part.

(b) Such bond shall provide protection to the program against loss by reason of acts of fraud or dishonesty on the part of such director, officer, employee or agent directly or through connivance with others.

§ 1629.3 Criteria for determining handling.

(a) The term "handles" shall be deemed to encompass any relationship of a director, officer, employee or agent with respect to funds or other property which can give rise to a risk of loss through fraud or dishonesty. This shall include relationships such as those which involve access to funds or other property or decision-making powers with respect to funds or property which can give rise to such risk of loss.

(b) Subject to the application of the basic standard of risk of loss to each situation, the criteria for determining whether there is "handling" so as to require bonding are:

(1) Physical contact with cash, checks or similar property;

(2) The power to secure physical possession of cash, checks or similar property such as through access to a safe deposit box or similar depository, access to cash or negotiable instruments and assets, power of custody or safe-keeping, or the power to borrow or withdraw funds from a bank or other account whether or no physical contact actually takes place;

(3) The power to transfer or cause to be transferred property such as mortgages, title to land and buildings, or securities, through actual or apparent authority, to oneself or to a third party, or to be negotiated for value.

(c) Persons who actually disburse funds or other property, such as oficers authorized to sign checks or other negotiable instruments, or persons who make cash disbursements, shall be considered to be "handling" such funds or property.

(d) In connection with disbursements, any persons with the power to sign or endorse checks or similar instruments or otherwise render them transferable, whether individually or as cosigners with one or more persons, shall each be considered to be "handling" such funds or other property.

(e) To the extent a person's supervisory or decision-making responsibility involves factors in relationship to funds discussed in paragraphs (b) (1), (2), (3), or paragraphs (c) and (d) of this section, such persons shall be considered to be "handling" in the same manner as any person to whom the criteria of those subparagraphs apply.

§ 1629.4 Meaning of fraud or dishonesty.

The term "fraud or dishonesty" shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in the handling of funds as delineated in § 1629.3. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdeameanor, provided that within the law of the state in which the act is committed, a court could afford recovery under a bond providing protection against fraud or dishonesty. As applied under state laws, the term "fraud or dishonesty" encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, wilful misapplication or any other fraudulent or dishonest acts.

§ 1629.5 Form of bonds.

Any form of bond which may be described as individual, schedule or blanket, or any combination of such forms of bonds, shall be acceptable to meet the requirements of this Part. The basic types of bonds in general usage are:

(a) An individual bond which covers a named individual in a stated penalty;

(b) A name schedule bond which covers a number of named individuals in the respective amounts set opposite their names;

(c) A position schedule bond which covers all of the occupants of positions listed in the schedule in the respective amounts set opposite such positions;

(d) A blanket bond which covers all the insured's directors, officers, employees and agents with no schedule or list of those covered being necessary and with all new directors, officers, employees and agents bonded automatically, in a blanket penalty.

§ 1629.6 Amount of individual bonds.

If a program chooses to purchase individual bonds for the persons required to be covered pursuant to §§ 1629.2 and 1629.3 above, the amount of bonding required shall be fixed at the beginning of each fiscal year of the program. The amount of the bond shall be not less than ten (10) percent of the amount of funds handled, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000.

§ 1629.7 Effective date.

(a) Each program shall certify in its Application for Refunding, beginning with the application for FY 1985 funds, that it has obtained a bond or bonds which satisfy the requirements of this Part.

(b) A copy of such bond or bonds shall be provided to the Corporation at its request.

Dated: June 1, 1984.

Alan R. Swendiman,

General Counsel.

[FR Doc. 84-15173 Filed 6-5-84; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-1147]

Long-Run Regulation of AT&T's Basic Domestic Interstate Services; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; Extension of time for filing reply comments.

SUMMARY: This action grants the motion of GTE Service Corporation and United Telecom Communications, Inc. for a two-week extension of time, until June 4, 1984, for filing reply comments in the *Notice of Inquiry In the Matter of Long-Run Regulation on AT&T's Basic Domestic Interstate Services,* CC Docket No. 83-1147.

DATES: Reply comments are now due by June 4, 1984.[1]

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Warren Lavey, Common Carrier Bureau, (202) 632-6910.

Memorandum Opinion and Order

In the matter of Long-Run Regulation of AT&T's Basic Domestic Interstate Services; CC Docket No. 83-1147.

Adopted: May 18, 1984.
Released: May 21, 1984.

By the Chief, Common Carrier Bureau.

1. In a Notice of Inquiry released October 27, 1983, we invited interested parties to file comments on the appropriate long-run regulation of American Telephone and Telegraph's (AT&T) basic domestic services. 48 FR 51340 (November 8, 1983). The original filing dates had been extended so that comments were filed on April 2, 1984 and reply comments were due May 21, 1984. On May 16, GTE Service Corporation and United Telecom Communications, Inc. (GTE) jointly filed a motion for an extension of time in which to file reply comments.[2]

2. GTE's motion for extension of time provides as the basis for relief the great volume of comments filed in this proceeding (over 600 pages), and the concurrent demands made on the industry in connection with other Commission proceedings. GTE states that a minimum two-week extension of time is necessary for the parties to make a constructive and thoughtful contribution to the record in this proceeding.

3. We find that in light of the importance of this inquiry, the public interest would be served by allowing an additional two weeks for reply comments to be filed. Accordingly, the date for filing reply comments in the *Long-Run Regulation of AT&T's Basic Domestic Services* is extended to June 4, 1984.

4. So ordered.

Federal Communications Commission.

Jack D. Smith,

Chief, Common Carrier Bureau.

[FR Doc. 84-15150 Filed 6-4-84; 10:45 am]

BILLING CODE 6712-01-M

47 CFR Part 15

[General Docket No. 83-325; RM-4062; RM-4075; FCC 84-232]

Addition of New Interim Provisions for Cordless Telephones

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rule making.

SUMMARY: This Notice proposes a labelling requirement for cordless

[1] **Editorial Note.**—This document was received by the Office of the Federal Register on Friday, June 1, 1984.

[2] The Commission's Regulations require motions for extensions of time to be filed at least seven days before the filing date. 47 CFR § 1.46. GTE's motion, therefore, is untimely, and we cannot condone their dilatoriness in light of the fact that they presented no explanation or excuse for filing late. We will address the merits of their request in this instance due to the importance of the proceeding. GTE is admonished, however, to make future motions in a timely manner.

telephones to alert consumers of the features which protect against telephone calls being made by persons other than the owner. This action is necessary in order to address concerns by telephone companies about misbilling caused by cordless telephones. The contemplated labelling will help consumers to select cordless telephones with features designed to protect against misbilling as appropriate for their needs.

DATES: Comments requested by July 9, 1984, reply comments by July 24, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Julius P. Knapp (202)653–8247.

List of Subjects in 47 CFR Part 15

Communications equipment, Labelling.

Further Notice of Proposed Rulemaking

In the matter of amendment of Part 15 to add new interim provisions for cordless telephones General Docket No. 83–325, RM–4062, RM–4075.

Adopted May 17, 1984.
Released: May 23, 1984.

By the Commission.

1. On December 22, 1983, the Commission adopted a *Report and Order* in this docket establishing new interim provisions for cordless telephones, released January 10, 1984, 49 FR 1512, Janaury 12, 1984. The new regulations are set forth in 47 CFR 15.231–7. In paragraph 27 of the *Report and Order*, we explained that we would propose an additional labelling requirement for cordless telephones to inform consumers of the features designed to prevent others from dialing calls through their unit.

2. A cordless telephone is a device which performs the same functions as a conventional telephone, but the telephone cord is replaced by a low power two-way radio. Cordless telephones actually consist of two pieces of equipment: a base unit which connects to the telephone line and a portable handset. Most cordless telephones provide pushbutton dialers on the portable handset to allow the user to dial telephone calls from the handset through the base unit. One concern, however, is that the base unit may dial calls in response to signals other than those from the owner's handset. This could be due to intentional theft of service, inadvertent interaction with another nearby cordless telephone, or inadvertent responses to radio noise. As a result, the user may be charged for calls that he did not make.

3. In order to reduce the likelihood of the above described problems, most manufacturers include some form of "security" features in their cordless telephones of varying degrees of sophistication.[1] American Telephone & Telegraph Co. (AT&T) and General Telephone & Electronics Service Corporation(GTE) filed comments in this proceeding expressing concern that they may be adversely affected by cordless telephones that have what could be judged inadequate telephone network protection. They pointed out, for example, that telephone companies would be left to resolve cases of misbilling, and would have difficulty in tracing obsene calls made through someone's cordless telephone.

4. The *Notice of Proposed Rule Making* in this docket, 48 FR 16298, April 15, 1983, had proposed that cordless telephones be designed with some minimal security features. In adopting interim rules for cordless telephones, the Commission decided not to include a minimal design requirement for cordless telephone security features. This decision was based on a number of factors as elaborated in paragraphs 25 through 27 of the *Report and Order*. Chief among them were: marketplace forces already had brought about security features on most cordless telephones; little evidence had been submitted of actual costs to telephone companies caused by inadequate cordless telephone security features; and the degree of security protection needed varies for each consumer depending, among other things, on whether the cordless telephone will be operated in an area of high or low density usage. In addition, the Commission was concerned that consumers might be misled into believing they were buying a telephone that was immune to security problems because it met FCC standards, when in fact the minimal security obtained would not have alleviated security problems in many circumstances.

5. In lieu of a design requirement, it appears that the public interest can best be served by a labelling requirement whereby consumers would be informed of the security features that prevent others from dialing calls through the unit. This will bring the potential problem of inadequate cordless telephone security, as well as the means employed by the specific product to deal with such potential, to the consumer's attention. As a consequence, the marketplace will work to provide appropriate security features best suited to the individual consumer's needs. We are proposing that the label be carried on the outside of the box in which the cordless telephone is sold so that it can be readily seen by the consumer at time of purchase. The proposed label consists of essentially two parts: a specific statement warning the consumer that calls may be dialed unintentionally, resulting in misbilling;[2] and the manufacturer's description of the features designed to prevent such occurrences. The description is completely at the manufacturer's discretion and could for example range from "no security features" to "750 security codes." We invite comment on this recommendation.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq*, the Commission issues the following initial regulatory flexibility analysis:

I. *Reason for action.* This action is a follow up to the Commission's *Report and Order* in this docket whereby interim rule provisions for cordless telephones were established. The Commission stated its intent to propose a labelling requirement concerning cordless telephone security in order to address the concerns of telephone companies about misbilling of calls and other potential problems.

II. *The objective.* The Commission is proposing a labelling requirement to alert consumers that in certain environments cordless telephones may require features to preclude others from dialing calls via their telephone line. It is expected that the consumer can then purchase a unit with appropriate "security" features.

III. *Legal basis.* The action proposed is in furtherance of sections 4(i), 302(a), 303(g) and 303(r) of the Communications Act of 1934, as amended, which permit the Commission to make reasonable regulations governing the interference potential of RF equipment and to promote the larger and more effective use of radio in the public interest.

IV. *Entities affected; nature of economic impact; significant alternatives.* This action would affect all manufacturers of cordless telephones. The cost of the proposed label is not expected to be significant. Alternatives would be to require that the information be put in the user instruction manual or adopt no requirement whatsoever.

V. *Recording, record-keeping and other compliance requirements.* FCC

[1] Cordless telephone manufacturers describe features which prevent unauthorized access of the telephone line generally as "security" features. This term does not refer to the ability of someone else to listen in on the conversation.

[2] The exact language proposed is set forth in the appendix hereto as proposed 47 CFR 15.236(b).

certification is currently required for cordless telephones. The only additional compliance requirement we are proposing is that the text and location of the subject label be stated in the application for certification.

7. For the purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making unit the time that a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is issued by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits an oral *ex parte* presentation, addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served and must also state the docket number of the proceeding to which it relates. See § 1.1231 of the Commission's rules, 47 CFR 1.1231.

8. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis of the expected impact of these proposed policies and rules on small entities. The initial analysis is set forth in paragraph 6. Written public comments are requested on the initial analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601, et seq.).

9. Authority for issuance of this Notice is contained in sections 4(i), 302, 303(g) and 303(r) of the Communications Act of 1934, as amended. In accordance with the applicable procedures set forth in § 1.415 of the regulations, interested persons may file Comments on or before July 9, 1984 and Reply Comments on or before July 24, 1984. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. A summary of these Commission procedures governing *ex parte* presentations in informal rule making is available from the Commission's Consumer Assistance Office, Washington, D.C. 20554.

10. In accordance with the provisions of § 1.419 of the regulations, an original and five copies of all comments, reply comments, briefs and other documents shall be furnished to the Commission. To obtain the widest possible response in this proceeding, informal comments (without extra copies) will be accepted, but these comments should make specific reference to this proceeding. Responses will be available for public inspection during regular working hours in the Commission's Public Reference Room located at its headquarters at 1919 M Street, NW., Washington, D.C. 20554. For further information regarding this proceeding, contact Julius P. Knapp at (202) 653–8247.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 15—[AMENDED]

It is proposed that Part 15 of the FCC Rules, 47 CFR Part 15, be amended by designating the present text of § 15.236 as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 15.236 Labelling and identification requirements for a cordless telephone.

* * * * *

(b) The box or other package in which a cordless telephone is marketed must carry a statement in a prominent location which reads as follows:

Caution: The base unit in this cordless telephone may respond to other nearby units or radio noise, resulting in telephone calls being dialed through this unit without your knowledge and, possibly, calls being misbilled. In order to protect against such occurrences this cordless telephone is provided with the following features: [to be completed by the manufacturer].

The application for certification of the cordless telephone shall specify the complete text of the statement that will be carried on the box and indicate where, specifically, it will be located.

[FR Doc. 84–15135 Filed 6–5–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Asclepias Welshii (Welsh's Milkweed) To Be an Endangered Species and To Designate Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Asclepias welshii* (Welsh's milkweed) to be an endangered species and to designate its critical habitat under the authority of the Endangered Species Act, as amended. This species is known to occur only in the Coral Pink Sand Dunes area, and in a small area of the Sand Hills to the northeast of the Coral Pink Sand Dunes, Kane County, Utah. In the Coral Pink Sand Dunes, most plants (about 6,000) occur on lands administered by the Bureau of Land Management. Another 2,000 plants are thought to occur on State of Utah land in the Coral Pink Sand Dunes State Park, while about 500 plants are estimated to grow in the Sand Hills northeast of the Coral Pink Sand Dunes. Altogether, the total population of this species is thought to be no more than 8,500 plants. The population in the Coral Pink Sand Dunes is distributed by off-road vehicle activity and dmoestic livestock grazing. This proposal, if made final, would implement for this species the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposed action.

DATES: Comments from all interested parties must be received by August 6, 1984. Public hearing requests must be received by July 23, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, Region 6, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours at the Service's Region 6

Endangered Species Division, 134 Union, fourth floor, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: James L. Miller, Regional Botanist, Region 6, Endangered Species Division (see **ADDRESSES** section), 303–234–2496; FTS 234–2496.

SUPPLEMENTARY INFORMATION:

Background

Asclepias welshii (Welsh's milkweed) is in the family Asclepiadaceae (milkweed family). It was described by N. Holmgren and P. Holmgren in 1979 from plants collected on the Coral Pink Sand Dunes in Kane County, Utah. Five earlier collections wre made in this area between 1954 and 1978 by Walter Cottam, A. H. Barnum, N. Holmgren, and S. L. Welsh (Holmgren and Holmgren, 1979). This plant is an herbaceous perennial, 2.5–10 cm. tall, with large oval leaves and cream colored flowers that are rose-tinged in the middle. This species grows on open, sparsely vegetated sand dunes, and on the lee slopes of dunes in the shade of trees.

The population consists of approximately 8,500 individuals in about 12 separate groups distributed somewhat randomly over the Coral Pink Sand Dunes and in an area of the Sand Hills to the northeast. In the Coral Pink Sand Dunes Area administered by the Bureau of Land Management (BLM), a careful survey disclosed about 6,000 plants. On State of Utah land (Coral Pink Sand Dunes State Park) there are about 2,000 plants, while in the small area of the Sand Hills to the northeast there are an estimated additional 500 plants (Anderson, pers. comm., January 1984). The plants grow on both the tops and sides of the dunes. There is direct evidence of grazing of plants by livestock, with over 50 percent of the plants affected in some parts of the population.

In the summer of 1980, new field work was carried out at the Coral Pink Sand Dunes site by Service botanist (Anderson 1980). This investigation involved mapping groups of plants and counting plants by age class. The investigation showed that the population is being adversely impacted by off-road vehicle (ORV) activity and domestic livestock grazing.

This species was included in the list of plants for threatened or endangered classification in the December 15, 1980, **Federal Register** (42 FR 82480). For administrative purposes, all plants included in that review are treated as being under petition. A finding was made on October 13, 1983, that listing *Asclepias welshii* was warranted but precluded by pending listing actions, in accordance with Section 4(B)(3)(b)(iii) of the Act. The present proposed rule constitutes the new required finding that action is warranted for this species, and the proposed rule is hereby published to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Asclepias welshii* N. Holmgren and P. Holmgren are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Off-road vehicle use associated with recreation is impacting the habitat of *Asclepias welshii*. Tracks of ORV's were obsrved crossing areas with plants of *Asclepias welshii* during 1980. The habitat consists of unstable sand dunes. Increased movement of sand caused by ORV use may have additional indirect impact on the plants.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* The effects of livestock predation on the plants may be considerable, in some areas amounting to more than 50 percent of the plants affected by direct grazing (Anderson 1980). This is a higher incidence of grazing than many species can tolerate. An additional observed effect from trampling has not been quantified.

D. *The inadequacy of existing regulatory mechanisms.* There are no effective Federal, State, or local laws or regulations that apply to this species or provide for its protection.

E. *Other natural or manmade factors affecting its continued existance.* The arid climate and unstable habitat of Welsh's milkweed make its ecosystem a fragile one, easily degraded by surface disturbances, and subject to effects from activities on adjoining lands.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Asclepias welshii* as endangered. This is based on the fact that the species exists in very low numbers, and occurs in a limited fragile ecosystem that is presently threatened by ORV use and livestock grazing. A proposal of critical habitat was considered prudent in this case because most of the plants are known to occur on Federal lands, are not subject to commercial or private collecting pressures, and would benefit from such a determination. A decision to take no action on *asclepias welshii* would exclude this species from needed protection available under the Endangered Species Act. Given the severity of the threats to this species, and its limited distribution and small numbers, to take no action, or to propose is as threatened, would be contrary to the Act's intent.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, means: (i) The specific areas within the geographical area occupied by a species, at the time its is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The Act in section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is being proposed for *Asclepias welshii* to include the entire habitat presently occupied by the species in Kane County, Utah, in both the Coral Pink Sand Dunes, and in a small area to the northeast in the Sand Hills. The Coral Pink Sand Dunes are a clearly definable and recognizable geographic entity, readily located on Geological Survey maps. The known primary constituent element is considered to be the sand dunes themselves.

Section 4(b)(8) requires, for any proposed or final regulation which designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be affected by such designation. Continued surface disturbance by ORVs, and grazing by domestic livestock are adversely affecting *Asclepias welshii* and its habitat. These activities would need to be regulated or

modified to take into account the well-being of this species.

Such regulations or modifications of adverse activities might include restricting ORV use to existing roads and trails or excluding use from certain areas, and restricting the amount of grazing activity through fencing or other means.

Section 4(b)(2) of the Act requires the service to consider economic and other impacts of designating a particular area as critical habitat. The Service will reevaluate the geographic critical habitat designation at the time of the final rule, after considering all additional information obtained.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species, these are initiated by the Service following listing. The protection required of Federal agencies and taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402, and are now under revision (see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or results in the destruction or adverse modification of proposed critical habitat. When a species is finally listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an adverse effect is expected, the Federal agency must enter into consulation with the Service. Possible effects of this rule on the BLM have already been discussed and are expected to be minimal. BLM's management is likely to be affected, but not to any great extent; restricting traffic to some existing roads and some fencing might be necessary.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. With respect to *Asclepias welshii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate on foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63, also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued for *Asclepias welshii* since it is neither a desirable species for collectors, nor is it common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisidiction. This new prohibition will apply to *Asclepias welshii*. Permits for exceptions to this prohibition are available through section 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and these will be made final following public comment. It is likely that few taking permits for *Asclepias welshii* will ever be requested.

Requests for copies of the regulations on plants, and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data pertaining to any threat (or lack thereof) to *Asclepias welshii*;

(2) The location of any additional populations of *Asclepias welshii* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided for by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on *Asclepias welshii*, and

(5) Any foreseeable economic and other impacts likely to result from designation of critical habitat.

Final promulgation of the regulations on *Asclepias welshii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, Region 6, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** (48 FR 49244) on October 25, 1983.

References

Anderson, John. 1980. Study on *Asclepias welshii* on the Coral Pink Sand Dunes and the Sand Hills. Unpubl. report on file at the U.S. Fish and Wildlife Service's Regional Office, Denver, Colorado. 5 pp.

Holmgren, N. H. and P. K. Holmgren. 1979. A new species of *Asclepias* (Asclepiadaceae) from Utah. Brittonia 31(1): 110–114.

Author

The primary authors of this rule are William L. Baker, Colorado Natural Heritage Inventory, Denver, Colorado, and James L. Miller, Endangered Species Division, Region 6, U.S. Fish and Wildlife Service, Denver, Colorado. J. Scott Peterson, Colorado Natural Heritage Inventory, Denver, Colorado, and John L. Paradiso, Office of

Endangered Species, Washington, D.C., served as editors.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359; 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Asclepiadaceae—Milkweed family						
Asclepias welshii	Welsh's milkweed	U.S.A. (UT)	E		17.96(a)	NA

3. It is further proposed to amend § 17.96(a) by adding critical habitat of *Asclepias welshii* as follows (the position of this and any following critical habitat entries under § 17.96(a) will be determined at the time of publication of a final rule):

§ 17.96 Critical habitat—plants.

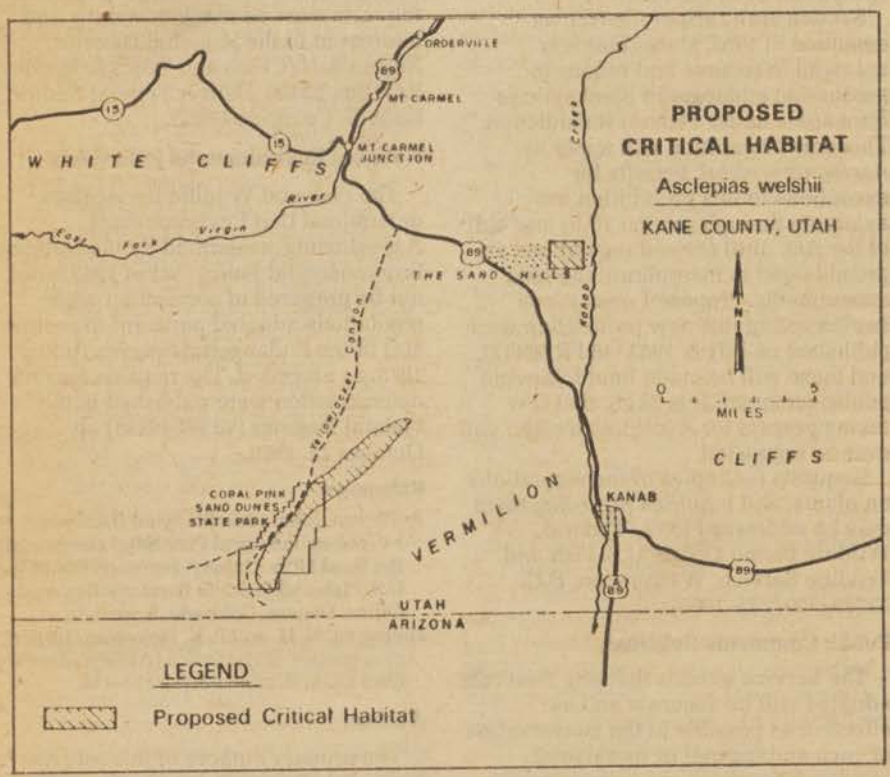
(a) * * *

* * * * *

Critical Habitat for Welsh's Milkweed

Family Asclepiadaceae: Welsh's Milkweed (*Asclepias welshii*)

Utah, Kane County, entire area of the Coral Pink Sand Dunes, about 10 miles west of Kanab; also, the area of the Sand Hills, about 10 miles north of Kanab, within T42S R6W Section 8 (S½ of the N½ and N½ of the S½). The constituent elements of this cirtical habitat are the sand dunes themselves.



* * * * *

Dated: May 18, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 15136 Filed 6–5–84; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Gila Ditaenia (Sonora Chub) To Be a Threatened Species and To Determine Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes a fish, *Gila ditaenia* (Sonora Chub), to be a threatened species and to determine its critical habitat under the authority contained in the Endangered Species Act of 1973, as amended. A special rule allowing take for certain purposes in accordance with Arizona State laws and regulations is proposed. *Gila ditaenia* occurs in Santa Cruz County, Arizona, and in Sonora, Mexico. It is threatened by the possible introduction of exotic fish and their parasites into its habitat, and by potential mining activities. It is particularly vulnerable to these threats because of its very limited range, and because of the intermittent nature of the stream. This proposal, if finalized, would implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Gila ditaenia*. The Service seeks date and comments, from the public on this proposal.

DATES: Comments from all interested parties must be received by August 6, 1984. Public hearing requests must be received by July 23, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, 421 Gold Avenue SW., Room 407, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: .For further information on the proposal contact Dr. James E. Johnson, Chief, Regional Office of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and

Wildlife Service, Arlington, Virginia (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

Gila ditaenia was first collected by E. A. Mearns in 1893 from Sycamore Creek, Arizona. It was first described from fish collected by R. G. Miller from the Rio Magdalena near the town of La Casita, Sonora, Mexico (Miller, 1945). This fish is a member of the minnow family and is generally less than 125 millimeters (5 inches) in total length. It is a moderately chubby, dark colored fish, with two prominent black lateral bands on the sides and a dark oval spot at the base of the tail. In breeding males, the lower fins develop red at the bases, with some orange on the belly. *Gila ditaenia* is primarily a pool dweller, but is highly secretive and little is known of its behavior and habitat preferences (Minckley, 1973).

In the United States, this fish occurs only in Sycamore Creek and its headwater tributary, Yank's Spring, located on the Colorado National Forest northwest of Nogales, Santa Cruz County, Arizona. Yank's Spring has a perennial flow; however, it has been impounded in a concrete tank for many years. Sycamore Creek starts to flow about ½ mile below Yank's Spring and flows downstream 3.7 miles (USDA, 1982) in a series of pools and small riffles over a bedrock and rubble substrate. It is intermittent during various times of the year, at which time it is a series of pools of varying depth (Miller, 1949; Brooks, 1982). When intermittent, pools are maintained in shaded areas against cut banks or the canyon walls by underground flow (Minckley, 1973). During years of heavy rainfall, water does reach to the International Border, some 5 miles downstreams from Yank's Spring, at which time the Sonora chub presumably extends its range to that boundary, if not beyond.

Available life history information is limited to feeding observations based on a few individuals and to spawning observations based on the presence of young in various collections (Minckley, 1973). Information on the riparian habitat is provided in earlier works by R. R. Miller (1945), L. Miller (1949), and Goodding (1961). More recent water quality and habitat information is presented by Brooks (1982) in a brief characterization of the physio-chemical features of Sycamore Creek. This information is summarized in the 1983 status report on *Gila ditaenia* (Minckley, 1983).

Current threats to the United States population include the stocking of exotic fishes and their associated parasites, and possible uranium mining.

In the State of Sonora, Mexico, this fish is known from very few localities, and nothing is known about its biology. The 1940 type locality was the Rio Magdalena near La Casita, Sonora, Mexico. At that time, the Rio Magdalena was a clear stream 4 to 5 feet wide, about 1 foot deep, and with fairly swift current over a bottom of sand and gravel. The principal vegetation was watercress, found in backwaters along the stream (Miller, 1945). It is not known if habitat for *Gila ditaenia* still exists at this location, or if so, its condition. *Gila ditaenia* has been collected as recently as 1981 from the Rio Magdalena drainage at Campo Carretero and Cienega La Atascosa (D. Hendrickson, Arizona State University, pers. comm., 1983, and in press). These collections indicate the possibility of hybridization between *Gila ditaenia* and *Gila purpurea*, the Yaqui chub, at least in one locality. It is not known how widespread such possible hybridization is within that population or if it occurs in other Mexican populations.

In November 1982, the U.S. Fish and Wildlife Service contracted Mr. C. O. Minckley to prepare a report on the status of *Gila ditaenia*. Because of threats to the species from the introduction of exotic fish and their associated parasites, potential mining activities, and the fact that this fish occurs in a very limited area in Arizona and has an uncertain status in Mexico, threatened status with critical habitat was recommended by Minckley.

Gila ditaenia was included on the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454) in category 2. Category 2 includes those taxa which are thought to be in need of listing as threatened or endangered, but for which more information is needed to determine the status of the species and to support listing. That information is now available for *Gila ditaenia* in the current status report (Minckley, 1983).

Gila ditaenia is listed by the State of Arizona as a threatened species, Group 3 (Arizona Game and Fish Commission, 1982), which are those species "* * * whose continued presence in Arizona could be in jeopardy in the foreseeable future."

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the act (codified at 50 CFR Part 424; under revision to accommodate the 1982 amendments) set forth procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Gila ditaenia* (Sonora chub) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The present and historic range of *Gila ditaenia* in the Unted States consists of Sycamore Creek and Yank's Spring, located on the Coronado National Forest in Santa Cruz County, Arizona. Yank's Spring is a perennial spring impoundment in a concrete tank, and Sycamore Creek is a small, seasonally intermittent stream only 5 miles or less in length. Its very limited distribution makes this fish quite susceptible to any habitat disturbances, especially during periods when the stream flow is intermittent. Habitat distturbances which could be detrimental to the species are increased siltation and runoff subsequent to mining or other activities, depletion of the stream flow, and the introduction of

manmade pollutants into the stream. It is quite feasible that this species could be extirpated throughout its small U.S. range in a relatively short time by such habitat damage and loss (Minckley, 1983).

Sycamore Canyon at present remains in a basically unaltered state, and present impacts of man's activities in the area are relatively minor. A portion of the stream (approximately 1.5 miles) flows through the Goodding Research Natural Area which is a special use designation of the Forest Service. This area is withdrawn from mineral entry except under lease, and is closed to grazing. Recreation is limited to nondeveloped dispersed uses, but the canyon receives fairly heavy visitor use. Yank's Spring is the site of the trailhead parking for visitors into the area; however, the spring has been in a concrete tank for many years and is relatively resistant to habitat damage.

Besides *Gila ditaenia*, Sycamore Canyon also supports several rare and unique plant and animal species. One of these, the Tarahumara frog, experienced a catastrophic die-off in Sycamore Canyon in 1974 and has not been found there since. The factors causing its disappearance are not fully known, but are thought to be environmental toxicants (Hale, 1983). Since this frog occupies the same waters as *Gila ditaenia*, the cause may be of importance to the survival of *Gila ditaenia* as well.

At present no mining is occurring anywhere within the Sycamore Creek watershed and none is expected in the near future (R. B. Tippecannoic, U.S. Forest Service, pers. comm., 1983); however, active mining is ongoing in California Gulch, just one watershed to the west. Exploration for uranium occurred in 1981 on the upper eastern slopes of the Sycamore drainage on mining claims occupying approximately 4 to 5 square miles. Uranium was found and the claims are being maintained; however, no active mining is presently planned here. The Sycamore Creek drainage is mineralized and the development of mining activity within the watershed would have the potential for severe adverse effects on *Gila ditaenia* through such activities as increased water demand and withdrawal, habitat disturbance, siltation, and pollution.

Although the canyon is included in a livestock allotment, there is little direct effect on the *Gila ditaenia* habitat, due in part to steep, rocky streambank topography. Indirect effects of grazing, such as erosion and siltation, are minor at present but could have significant effects on *Gila ditaenia* habitat if grazing were increased.

Extremely little is known about the habitat of *Gila ditaenia* in Mexico. Hendrickson (Arizona State University, pers. comm., 1983) noted that the habitat near Cienega La Atascosa was in quite good condition in 1981; however, there is no protection for this species or its habitat in Mexico and the current or proposed uses in the area are not fully known. There is irrigated agriculture along the river, but very little groundwater pumping seems to be occurring. The amount of land under cultivation, the amount of water diversion, the pollution, and the riparian and channel damage appear to have remained fairly constant in the past (G. Mabhan, University of Arizona, pers. comm., 1983).

B. *Overutilization for commercial, recreational scientific, or educational purposes.* There is no indication that this species is overutilized for any such purposes at this time.

C. *Disease or predation.* Predation by introduced exotic fish could prove disastrous for *Gila ditaenia*, leading to its extirpation in the United States. The introduction of exotic fishes, particularly game fish, into Sycamore Canyon would undoubtedly result in predation of *Gila ditaenia*. Currently, green sunfish occur in small numbers in the lower portions of Sycamore Creek; however, the extent of their impact is unknown. Tentative plans are being made to remove this exotic fish (Brooks, 1982). The adverse impacts of parasites, introduced along with exotic fish, on other species of Gila are documented (James, 1968; Minckley, *et al.*, 1981; Wilson *et al.*, 1966) and would probably occur with *Gila ditaenia*.

D. *The inadequacy of existing regulatory mechanisms.* The State of Arizona lists this species under Group 3 of the "Threatened Native Wildlife in Arizona." Group 3 includes " Species or subspecies whose continued presence in Arizona could be in jeopardy in the foreseeable future. Serious threats to the occupied habitats have been identified and populations (a) have declined or (b) are limited to a few individuals in few locations" (AGFC, 1982). No protection of the habitat is included in such designation and no management plan exists for this species. In Mexico no protection exists for either the species or its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Although unlikely, the United States population could be extirpated by natural phenomena (drought) if the water supply for Sycamore Creek should fail. The possibility of this occurring is increased by many activities of man. Watershed disturbances within the basin such as poor grazing practices, mining, roads, or off-road vehicle use can contribute to erosion, lowering water tables, and disturbed runoff patterns, and may affect the amount of flow in both Yank's Spring and Sycamore Creek. Direct manipulation of water within the basin, such as stock tank construction and groundwater pumping, could also affect the flows.

In Mexico, Hendrickson (pers. comm., 1983, and in press) found that *Gila purpurea*, the Yaqui chub, which is native to the drainages of the Rios Yaqui, Matape, and Sonora, is now present in the Rio Magdalena along with *Gila ditaenia*. His collections indicate that hybridization may be occurring between the two species in at least at one location. Spread of *Gila purpurea* in the Rio Magdalena could result in extensive losses of *Gila ditaenia* through hybridization.

The proposed action has been arrived at through the careful assessment of the best scientific and commercial information available, as well as the best assessment of the past, present, and future threats faced by this species. Based on this evaluation, the proposed action is to list *Gila ditaenia* as threatened with critical habitat. Because of the small size of the United States population and its habitat, the resultant vulnerability to damage from a single or multiple sources, the potential for mineral development in the area, and because of the uncertain status of the Mexican population, its lack of any legal protection, and increasing water demand in its range, it was apparent that not to propose this species would probably result in its becoming endangered in the foreseeable future. However, the status of the United States population of *Gila ditaenia* is presently stable, and at least some populations exist in Mexico. The U.S. population is currently afforded some protection by State laws and by management policies of the Forest Service. Therefore, endangered status seems inappropriate.

Critical Habitat

The Act defines "critical habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection; and (ii) specific areas outside

the geographic area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Act requires that critical habitat be designated to the maximum extend prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical Habitat for *Gila ditaenia* is being proposed to include the entire area where the species is known to occur in the United States. This consists of Sycamore Creek, starting from its headwater tributary, Yank's Spring, downstream to the International Border with Mexico in Santa Cruz County, Arizona, including a 25 foot riparian area around the spring and along each side of the creek. The riparian zone is essential to the maintenance of the spring and creek ecosystem and the stream channel, and thus to the conservation of the species. All of the proposed area is in the Coronado National Forest.

Section 4(b)(8) of the Act requires for any proposed regulation which designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be impacted by such designation. Activities in Sycamore Creek during times of intermittent flow, such as intensive collecting or mining activities, could be detrimental to this fish. Any activities that would deplete the flow or would significantly alter the natural flow regime in Yank's Spring or Sycamore Creek, such as excessive groundwater pumping, impoundment, or water diversion, would adversely impact the proposed critical habitat. Any activities that would significantly alter the water chemistry at Yank's Spring or Sycamore Creek, such as release of chemical or biological pollutant at a point source or by dispersed release, would adversely impact the proposed critical habitat. Additionally, the introduction, advertent or otherwise, of exotic fish may prove deterimental to the Sonora chub due to predation and competition for food and space. Any parasites associated with such introduction would also be detrimental. As no Federal activities are currently planned for this area, critical habitat designation is not expected to cause an impact in the near future. If in the future activities are planned, the status of the Sonora chub would have to be considered during such planning.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as critical habitat. The Service is preparing an economic analysis that will be available at the time a final rule is prepared. The Service is requesting data from all concerned parties to assist in preparation of this analysis.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State and private agencies, groups and individuals. The Endangered Species Act requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The protection afforded *Gila ditaenia* by this proposal, if published as a final rule, is discussed in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as endangered or threatened. If published as a final rule, this proposal would require Federal agencies not only to ensure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Gila ditaenia* but also to ensure that their actions are not likely to result in the destruction or adverse modification of its critical habitat. If a Federal activity may affect a listed species, the Federal agency must enter into formal consultation with the Service. In addition, section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. Provisions for interagency cooperation implementing section 7 are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983).

The only known United States population of *Gila ditaenia*, and all proposed critical habitat for the species, are located on the Coronado National Forest. Sycamore Creek is fairly remote and approximately 1.5 miles of the stream are included in the Forest Service Goodding Research Natural Area, a limited use area. Present management of the Sycamore Creek drainage is compatible with the species. Therefore, no significant effects from these Federal activities are expected.

The Act and implementing regulations found at 50 CFR 17.31 set forth a series of prohibitions and exceptions which generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell deliver, carry transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies. General regulations governing the issuance of permits to carry out otherwise prohibited activities involving threatened animal species under certain circumstances are set out at 50 CFR 17.32.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for its conservation. The Sonoran chub is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State currently regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collect permit system is more than adequate to protect the species from excessive taking, so long as such takes are limited to: Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the special rule allows takes to occur for the above-stated purposes without the need for a Federal permit if a State collecting permit is obtained and all other State wildlife conservation laws and regulations are satisfied. The special rule also acknowledges the fact that incidental take of the species by State-licensed recreational fishermen is not a significant threat to this species. (In fact, angling is an unlikely method of capture of the species.) Therefore, under this special rule such incidental take would not be violation of the Act if the fisherman immediately returned the individual fish taken to its habitat. It should be recognized that any activities

involving the taking of this species not otherwise enumerated in the special rule are prohibited.

Without this special rule, all of the prohibitions of 50 CFR 17.31 would apply. This special rule would allow for more efficient management of the species, and thus would enhance the conservation of the species. For these reasons, the Service concludes that this regulatory proposal is necessary and advisable for the conservation of the Sonoran chub.

If listed under the Act, the Service will review this species to determine whether if should be placed upon the Annex of the convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The service intends that any rule finally adopted will be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to *Gila ditaenia;*

(2) The location of any additional populations of *Gila ditaenia* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided for by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on *Gila ditaenia* and on the area which is being considered for critical habitat; and

(5) Any foreseeable economic and other impacts resulting from the proposed critical habitat.

Final promulgation of the regulation on *Gila ditaenia* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service has not prepared any NEPA documentation for this proposed rule. The recommendation from CEQ was based, in part, upon a decision by the Sixth Circuit Court of Appeals which held that the preparation of NEPA documentation was not required as a matter of law for listing actions under section 4(a) of the Endangered Species Act. *PLF* v. *Andrus* 657 F.2d 829 (6th Cir., 1981).

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Authors

The primary author of this proposed rule is S. E. Stefferud, Endangered Species Staff, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. Authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding, in alphabetical order under "Fishes," the following to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
Fishes:							
Chub, Sonora.	*Gila ditaenia*	U.S.A. (AZ) Mexico (Sonora).	Entire	T		17.95(e)	17.44( ).
•	•	•	•	•	•		•

3. It is further proposed to amend Title 50 CFR § 17.44 by adding the following:

§ 17.44 Special rules—fishes.

* * * * *

( ) Sonora chub, *Gila ditaenia.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) for education purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or, (ii) incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

* * * * *

4. It is further proposed to amend § 17.95(e) by adding the critical habitat of *Gila ditaenia* as follows (the position of the following critical habitat entry under § 17.95(e) will be determined at the time of publication of a final rule):

§ 17.95 Critical habitat—fish and wildlife.

17.95 Critical habitat—fish and wildlife.

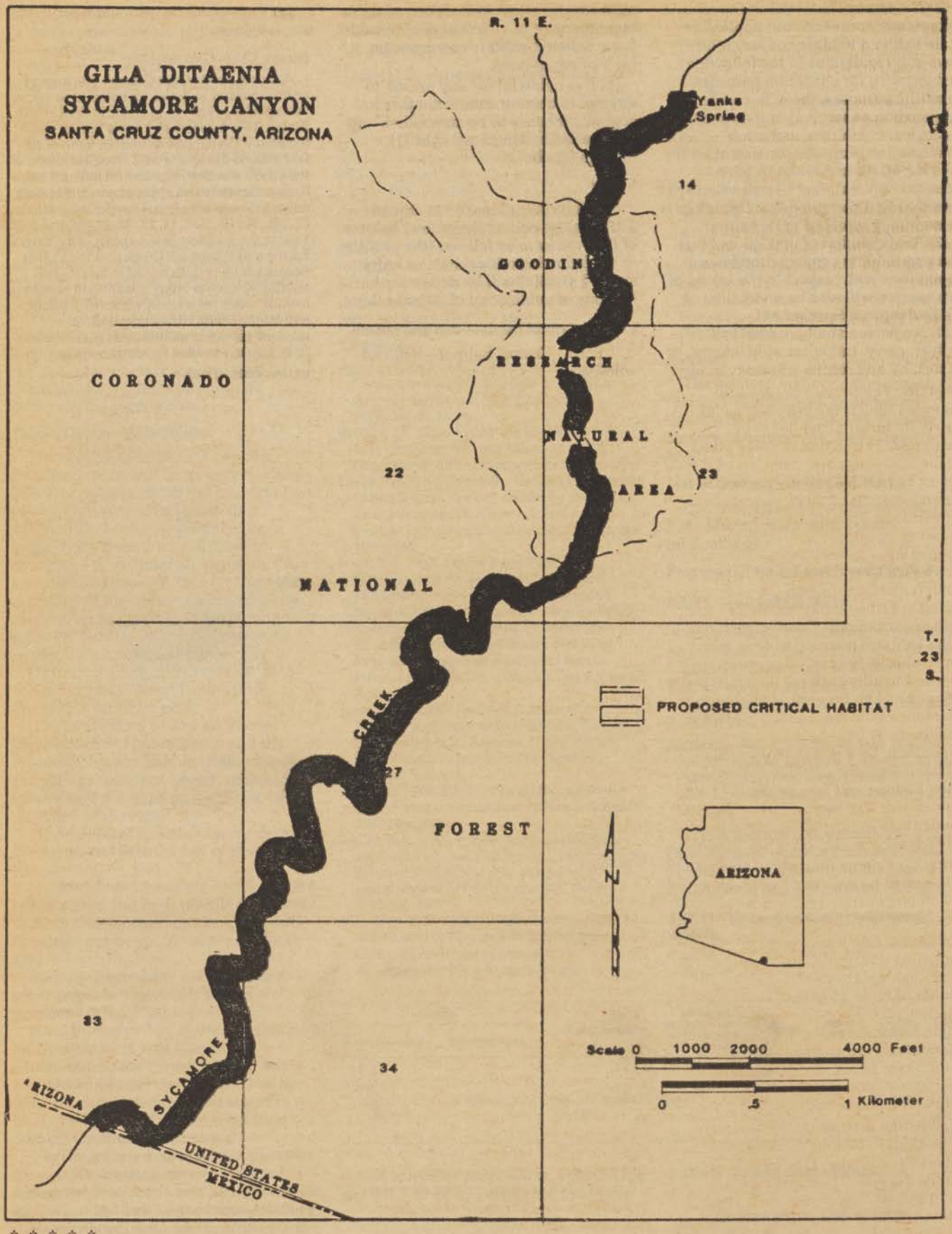
(e) * * *

* * * * * * *

Sonora Chub, *Gila ditaenia*

Arizona, Santa Cruz County. The area of critical habitat includes an entire area where this species is known to occur in the United States. This consists of Yank's Spring and Sycamore Creek, and a riparian zone of 25 feet around the spring and along each side of the creek, starting from and including Yank's Spring, downstream approximately 5 stream miles to the International Border with Mexico (T.23S., R.11E., Sec. 14, 22, 23, 27, 33, and 34). Within the sections listed above, only Yank's Spring and Sycamore Creek and the 25 foot riparian zone is determined to be critical habitat. Known primary constituent elements include clean permanent water with pools and intermediate riffle areas and/or intermittent pools maintained by subsurface flow in areas shaded by canyon walls.

BILLING CODE 4310-55-M



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BILLING CODE 4310-55-C

Dated: May 23, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-15140 Filed 6-5-84; 845 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status and Critical Habitat for the Fish Creek Springs Tui Chub (Gila Bicolor Euchila)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service propose to determine the Fish Creek Springs tui chub (Gila bicolor euchila) to be threatened. This action is being taken because the range and numbers of this species have substantially decreased since collections of this fish were first made in 1938. Primary threats include predation by introduced trouts and overgrazing of nearby lands. The only known Fish Creek Springs tui chub population occurs in Fish Creek Springs, located in Little Smoky Valley of southeastern Eureka County, Nevada. Critical habitat is included with this proposed rule. Special rules are proposed to allow take of the Fish Creek Springs tui chub for certain purposes in accordance with Nevada State laws and regulations. A final determination of *G. b. euchila* to be a threatened species will implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public, State, local, and Federal agencies on this proposal.

DATES: Comments from all interested parties must be received by August 6, 1984. Public hearing requests must be recevied by July 23, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials relating to this rule are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

During pluvial times, 10,000 to 30,000 years before present, large lakes occupied many of the valleys in the Great Basin Province (Hubbs and Miller, 1948; Hubbs *et al.*, 1974). As these lakes dried in response to an increasingly arid environment, aquatic organisms were isolated in remaining permanent waters, such as springs or creeks. It was by this method that a population of tui chubs was isolated in Fish Creek Springs of Little Smoky Valley. The tui chub has adapted to the unique environment provide by Fish Creek Springs and was described as a new subspecies, *Gila Bicolor euchila*, in 1972 (Hubbs and Miller, 1972).

Fish Creek Springs historically consisted of a series of four interconnected springs that comprised the headwaters of Fish Creek. When the tui chubs were first collected in 1938, their range included all four springs and associated outflow creeks for a distance of at least 0.3 miles below the junction of the two main spring-outflow creeks.

Since the original collections of the Fish Creek Springs tui chub, their range and numbers have severely decreased. Historically, they occurred in large number in the springs and their outflow creeks. Surveys conducted during 1978 and 1979 recorded the tui chub from only one of the four springheads and failed to find any tui chubs in the outflow creeks (Hardy, 1980a, b). However, in July 1983, biologists found that tui chubs had returned to three of the four springheads but none were found in the outflow creeks. The westernmost spring in the Fish Creek Springs system has been modified and is not longer connected to the system.

The Fish Creek Springs tui chub is threatened by predation from introduced rainbow trout (*Salmo gairdneri*) and brook trout (*Salvelinus fontinalis*), physical alteration of one springhead and overgrazing of the area surrounding the springs by cattle. Rainbow and brook trouts have been introduced into the Fish Creek Springs ecosystem on many occasions. These trout prey extensively on the tui chubs and restrict them to areas of dense aquatic vegetation in springpools. The habitat is also degraded by cattle overgrazing the vegetation surrounding the spring system. This overgrazing contributes to water pollution, a loss of streambank vegetation that formerly provided cover and a source of terrestrial insects, and siltation from erosion of adjacent soils. In addition, one springhead has been drastically althered to provide a livestock watering tank with no outflow and is isolated from the remainder of the spring system.

On December 30, 1982, the Service published a Notice of Review of Vertebrate Wildlife for Listing As Endangered or Threatened Species (47 FR 58453-58460). The Fish Creek Springs tui chub was included in this review as a category 1 taxon indicating that the Service has substantial information on hand to support the proposal of this fish for listing under provisions of the Endangered Species Act. On April 12, 1983, the Service was petitioned by the Desert Fishes Council to list the Fish Creek Springs tui chub. The Service reviewed and evaluated the petition and determined that it did present substantial information that the petitioned action may be warranted. The notice of finding for this petition was published in the **Federal Register** on June 14, 1984 (48 FR 27273-27274).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Fish Creek Springs tui chub (*Gila bicolor euchila*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Overgrazing by cattle has contributed to the decline of the tui chub in Fish Creek Springs. Because Fish Creek and Fish Creek Springs are the most available source of perennial water for several miles, they are used extensively for watering by cattle grazing adjacent lands. Cattle have denuded much of the land surrounding the springs. This has exposed the soil to erosion and has resulted in siltation of the habitat. Excrement from cattle and cattle carcasses also contribute to water pollution. Overall, the aquatic habitat has been significantly degraded by overgrazing on adjacent lands. One springhead has been drastically altered to provide a livestock watering tank. This spring presently has no outflow and is isolated from the other springs in the Fish Creek Springs system.

B. *Overutilization for commercial, recreational, scientific, or educational*

purposes. There is no indication that the Fish Creek Springs tui chub is being overutilized for any of these purposes.

C. *Disease or predation.* The Fish Creek Springs tui chub is the only fish native to the Fish Creek Springs system. However, man has introduced rainbow and brook trouts into these waters. These trouts prey extensively on the tui chubs, and this predation has eliminated the chubs from much of the open water habitat. Tui chubs are now confined to areas of dense aquatic vegetation that provide cover from the predatory trout.

D. *The inadequacy of existing regulatory mechanisms.* At present, there are State laws regulating the collection or take of Fish Creek Springs tui chubs but there are no regulations pertaining to its habitat. There are no provisions or regulations presently available for the management and recovery of this fish.

E. *Other natural or manmade factors affecting its continued existence.* There are no other natural or manmade factors known to be affecting the Fish Creek Springs tui chub.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to propose to list the Fish Creek Springs tui chub as threatened. The range and numbers of this species have substantially decreased since collections of this fish were first made in 1938. Primary threats include predation by introduced trouts and overgrazing of nearby lands. However, it does not appear that the species is likely to become extinct in the foreseeable future, so endangered status would not be appropriate at this time. Proper management of the species and its habitat should prevent the species from becoming endangered.

Critical Habitat

Critical Habitat, as defined by section 3 of the Act, means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for the Fish Creek Springs tui chub and includes four headwater springs of Fish Creek (Eureka County, Nevada) and their outflows, and a 50 foot riparian zone around these springs and outflows.

With respect to the Fish Creek Springs tui chub, the area proposed satisfies all known criteria for the ecological, behavioral, and physiological requirements of the species. Any activities which would alter existing chemical and physical characteristics of aquatic habitat in the springs and outflows, and the adjacent riparian habitat within 50 feet of the aquatic habitat, could adversely impact the Fish Creek Springs tui chub. These include pollution from cattle excrement, increased silt loads from overgrazing or removal of riparian vegetation within and adjacent to the critical habitat, lowering of the water table due to ground water pumping, and diversion of water from the springs and/or outflows. The introduction of exotic fishes (rainbow and brook trouts) contributed to the decline in numbers and distribution of the Fish Creek Springs tui chub. Any exotic fishes which would prey upon or compete with the native chub would bring about further decline of tui chub numbers in the three springs and outflows where they presently occur.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be affected by such designation. Such activities are identified for this species as follows:

1. Pollution of the water and overgrazing of riparian vegetation within the proposed critical habitat. The area proposed as critical habitat is in private ownership but adjacent lands are managed by the Bureau of Land Management. Overgrazing of riparian areas within and adjacent to the critical habitat could result in heavy runoff of soil, silt, cattle excrement, and other debris into the habitat of the tui chub, severely degrading water quality in the springs and outflows.

2. Ground water pumping that would affect water quality and/or quantity issuing from Fish Creek Springs. Any reduction in water quality would stress the fish, possibly resulting in death. Reduction in the quantity of water would reduce the amount of habitat available to the tui chub. This could cause overcrowding and ultimately result in the loss of the entire population.

3. Introduction of any non-native fishes which would prey upon or compete with the Fish Creek Springs tui chub. Introduced predatory fishes could further prey on the already reduced population of the Fish Creek Springs tui chub. Smaller nonpredatory fishes could compete with the small tui chub for food and shelter.

4. Alteration of springs or outflows for livestock watering irrigation, etc. Tui chubs have been eliminated from one spring because of its conversion to a livestock watering area and the resulting loss of approximately ¼ mile of outflow from the spring head.

The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organization are requested to submit information on economic or other impacts of this proposed action. The only Federal activity presently known which may have an impact on the proposed critical habitat of the Fish Creek Springs tui chub is the management of adjacent lands by the Bureau of Land Management.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained at the time the final rule is prepared.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection reqiuired by Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision

of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions that generally apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdication of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale listed species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

The above discussion generally applies to threatened species of fish and wildlife. However, the Secretary has discretion under section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The Fish Creek Springs tui chub is threatened primarily by habitat distrubance or alteration, not by intentional, direct taking of the subspecies or by commercialization. Given this fact and the fact that the State regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collecting permit system is more than adequate to protect the subspecies from excessive taking, so long as such takes are limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the special rule allows take to occur for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. The special rule also acknowledges the fact that incidental take of the species by State-licensed recreation fishermen is not a significant threat to this species. Therefore, under this special rule such incidential take would not be violation of the Act if the fisherman immediately returned the individual fish taken to its habitat. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule, all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the subspecies, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory proposal is necessary and advisable for the conservation of the Fish Creek Spring tui chub.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public other concerned governmental agencies the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Fish Creek Springs tui chub;

(2) The location of any additional populations of the Fish Creek Springs tui chub and the reasons why any habitat of this subspecies should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this subspecies;

(4) Current or planned activities in the subject area and their possible impacts on the Fish Creek Springs tui chub; and

(5) Any foreseeable economic and other impacts resulting from determining critical habitat.

Final promulgation of the regulation on the Fish Creek Springs tui chub will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the data of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulation adopted pursuant to section 4(a) of the Endangered Species Act f 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Hardy, T. 1980a. Interbasin report to the Desert Fishes Council—1978. Proc. Desert Fishes Council 10:68–70.

Hard, T. 1980b. The Interbasin area report—1979. Proc. Desert Fishes Council 11:5–21.

Hubbs, C.L., and R.R. Miller. 1948. The zoological evidence: correlation between fish distribution and hydrographic history in the desert basins of the western United States. Pp. 17–166. *In:* The Great Basin with emphasis of glacial and postglacial times. Bull. Univ. Utah. Vol. 38.

Hubbs, C.L., and R.R. Miller. 1972. Diagnosis of new cyprinid fishes of isolated waters in the Great Basin of western North America. Tranis. San Diego Soc. Nat. Hist. 17:101–106.

Hubbs, C.L., R.R. Miller, and C.L. Hubbs. 1974 Hydrographic history and relict fishes of the north-central Great Basin. Memoirs California Acad. Sci. 7:1–259.

Author

The primary authors of this proposed rule are Dr. Jack Williams, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814 and Mr. Randy McNatt, U.S. Fish and Wildife Service, 4600 Kietzke Lane, Building C, Reno, Nevada 89502.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammal, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat.

3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Fishes:							
Chub, Fish Creek Springs tui.	*Gila bicolor euchila.*	U.S.A. (NV)	Entire	T		17.95(e)	17.44( ).
*	*	*	*	*	*		*

3. It is further proposed to add the following as a special rule to § 17.44 (the position of this fish in § 17.44 will be determined at the time of final rule).

§ 17.44 Special rules—fishes.

* * * * *

( ) Fish Creek Springs tui chub, *Gila bicolor euchila.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation of survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or (ii) incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

4. It is further proposed to amend § 17.95(e) by adding critical habitat of the Fish Creek Springs tui chub as follows (the position of this entry under § 17.95(e) follows the same sequence as the species occurs in § 17.11):

§ 17.95 Critical habitat—fish and wildlife.

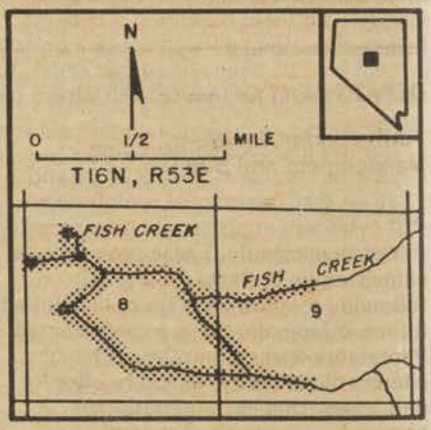
* * * * *

(e) Fishes.

* * * * *

Fish Creek Springs tui chub (*Gila bicolor euchila)*

Nevada. Eureka County. Fish Creek springs, their outflow creeks and the riparian area within 50 feet on all sides of these waters within T16N, R53E. Sec. 8, W½ Sec. 9. Known constituent elements include clean permanent flowing spring-fed pools and streams with deep pool areas, aquatic vegetation, and the absence of exotic fishes.



* * * * *

Dated: May 18, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–15139 Filed 6–5–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 110
Wednesday, June 6, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 1, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250, (202) 447–4414.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Human Nutrition Information Service
Development and Validation of a Food Frequency Questionnaire
Quarterly
Individuals or Households: 1,000 responses; 1,500 hours; not applicable under 3504(h)
Patricia Guenther, (301) 436–5618

• Animal and Plant Health Inspection Service
Orobanche Ramosa Mail Survey
On Occasion
Farms: 500 responses; 250 hours; not applicable under 3504(h)
Dr. Paul Sand, (301) 436–8295

• Economic Research Service
Market Structure and Distribution Patterns for Domestic Tree Nuts
Single Time Only
Businesses: 50 responses; 50 hours; not applicable under 3504(h)
Ben W. Huang, (202) 447–7290

• Farmers Home Administration
7 CFR 1955–A, Liquidation of Loans Secured by Real Estate and Acquisitions of Real and Chattel Property
On Occasion
Individuals, Government, Farms, Businesses: 12,460 responses; 7,007 hours; not applicable under 3504(h)
Frances Calhoun, (202) 382–1452

• Farmers Home Administration
7 CFR 1955–B, Management of Property
FmHA 120–10
On Occasion
Individuals, Government, Busineses: 20,400 responses; 35,910 hours; not applicable under 3504(h)
Frances Calhoun, (202) 382–1452

Revised

• Animal and Plant Health Inspection Service
Viruses-Serums-Toxins Regulations
VS 14–1, 14–3, 14–5, 14–7, 14–8, 14–15, 14–17, 14–20
On Occasion—Recordkeeping
Businesses, Non-Profit Institutions: 14,542 responses; 33,548 hours; not applicable under 3504(h)
David A. Espeseth, (301) 436–8245

• Animal and Plant Health Inspection Service
7 CFR 76, Hog Cholera and Other Communicable Diseases
On Occasion
Small Businesses: 100 responses; 50 hours; not applicable under 3504(h)
Dr. L. W. Schnurrenberger, (301) 436–8487

• Food and Nutrition Service
Monthly Report of Commodity Supplemental Food Programs
FNS 153
Monthly
State and Local Governments, Federal Agencies: 156 responses; 683 hours; not applicable under 3504(h)
Idalia McKelvey, (703) 756–3710

Susan B. Hess,
Acting Department Clearance Officer.

[FR Doc. 84–15198 Filed 6–5–84; 8:45 am]
BILLING CODE 3410–01–M

Commodity Credit Corporation

Proposed Determinations With Regard to the 1985 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed Determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1985 crop of upland cotton: (a) The loan level; (b) the established (target) price; (c) the national program acreage; (d) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (e) whether an acreage reduction program (ARP) should be established and, if so, the method to be used in establishing acreage bases and the percentage of reduction to be made in accordance with such program; (f) whether to permit haying and grazing of Acreage Conservation Reserve acreage; (g) whether a land diversion program should be established and, if so, the percentage of diversion and the payment rate; (h) whether binding contracts should be required for producers desiring to participate in any acreage reduction program; (i) whether offsetting compliance should be required of producers in order to be eligible for loans and deficiency payments; and (j) the loan level for seed cotton. These determinations are required to be made pursuant to the Agricultural Act of 1949, as amended, (hereinafter referred to as the "1949 Act") and the Commodity Credit Corporation (CCC) Charter Act.

EFFECTIVE DATE: Comments must be received on or before August 6, 1984, in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Carol Skelly, Agricultural Economist, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–6696. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these provisions will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that a notice of proposed rulemaking be published in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of these proposed determinations.

The titles and numbers of the federal assistance programs that this notice applies to are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

The following proposed program determinations for the 1985-crop of upland cotton are to be made by the Secretary:

Proposed Determinations

A. *Loan Rate for Upland Cotton.* Section 103(g)(1) of the 1949 Act provides that the Secretary shall determine and announce the loan rate for the 1985 crop of upland cotton by November 1, 1984. The loan rate must reflect for Strict Low Middling one-and-one-sixteenth-inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States the smaller of (1) 85 percent of the average price (weighted by market and month) quoted in the designated United States spot markets for Strict Low Middling one-and-one-sixteenth-inch cotton during the three years of the five-year period ending July 31 in the year in which the loan level is announced, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period (hereinafter referred to as the "spot market calculation"), or (2) 90 percent of the average, for the fifteen-week period beginning July 1 of the year in which the loan level is announced, of the five lowest-priced growths of the growths quoted for Middling one-and-three-thirty-seconds-inch cotton, C.I.F. Northern Europe (adjusted downward by the average difference during the period April 15 through October 15 of the year in which the loan rate is announced between such average Northern European price quotations and quotations in the designated United States spot markets for Strict Low Middling one-and-one-sixteenth-inch cotton (micronaire 3.5 through 4.9)) (hereinafter referred to as the "Northern European calculation"). The loan rate cannot be less than 55 cents per pound. Further, if the Northern European calculation results in a price which is less than the price derived from the spot market calculation, the Secretary may increase the loan level to such level as the Secretary deems appropriate, but not in excess of the level which is determined based upon the spot market calculation.

The spot market calculation cannot be completed until after August 1, 1984. Based upon quotations through March 1984, the spot market calculation is as follows:

(1) Weighted average spot market prices for Strict Low Middling one-and-one-sixteenth-inch upland cotton, micronaire 3.5 through 4.9:

August 1979 through July 1980—68.87 cents/lb.
August 1980 through July 1981—83.77 cents/lb.
August 1981 through July 1982—57.66 cents/lb.
August 1982 through July 1983—61.79 cents/lb.
August 1983 through July 1984*—71.31 cents/lb.

(2) Average of the five years, excluding the highest and lowest years: 68.87+61.79+71.31/3=67.32 cents/lb.

(3) Loan rate based on U.S. spot market calculations through March 1984: 67.32×.85=57.22 cent/lb.

The Northern European calculation cannot be performed at this time since the 1949 Act provides that the calculation must be based upon market quotations through October 15, 1984.

Comments on the upland cotton loan rate, along with supporting data, are requested from interested persons.

B. *The Established (Target) Price.* Section 103(g) (3) (B) of the 1949 Act provides that the established price for the 1985 crop or upland cotton shall not be less than the higher of (i) 81.0 cents per pound plus any adjustments for changes in production costs or (ii) 120 percent of the loan level determined in accordance with section 103(g) (1) of the 1949 Act. The 1949 Act provides that the minimum price of 81.0 cents per pound may be adjusted in such manner as the Secretary determines to be appropriate to reflect any change in (1) the average adjusted cost of production per acre for the two crop years immediately predceding the year for which the determination is made (1983–1984) from (2) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made (1982–1983). The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable costs, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

Comments are requested on the level of the established (target) price for the 1985 crop of upland cotton.

C. *National Program Acreage.* Section 103(g) (5) of the 1949 Act provides that the Secretary shall proclaim a national program acreage (NPA) for the 1985 crop by November 1, 1984. Such NPA may, however, be revised for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. Any revision shall be announced as soon as it has been made. The NPA shall be the number of harvested acres the secretary determines necessary, based on the estimated weighted national average of the farm program payment yields for the 1985 crop, to produce the estimated quantity (less imports) that will be utilized domestically and for export during the 1985–86 marketing year. The Secretary may make such adjustments in the NPA as he determines necessary, taking into consideration the estimated carryover supply, to provide for an adequate but not excessive total supply of cotton for the 1985–1986 marketing year. In no event shall the national program acreage be less than 10 million acres. If an acreage reduction program is implemented for the 1985 crop of upland cotton, the NPA determination will not be applicable. If required, the likely national program acreage for the 1985 crop of upland cotton is estimated to be:

(a) Estimated domestic consumption, 1985–86 (480 lb. net wt. bales)	5,700,000
(b) Plus estimated exports, 1985–86 (480 lb. net wt. bales)	6,200,000

*Not completed.

(c) Minus estimated imports, 1985–86 (480 lb. net wt. bales)	15,000
(d) Plus or minus adjustment to bring stocks to desired level (480 lb. net wt. bales) [1]	0
(e) Times 480 lbs. per bale equals desired pounds	5,704,800,000
(f) Divided by estimated national average of farm program yields (lbs./acre)	750
(g) Equal 1985 calculated National Program Acreage (acres)	10,008,421

[1] The 1985 beginning stock level is estimated to be 3.1 million bales. No stock adjustment is included because 3.1 million bales is considered to be an adequate beginning stock level.

Comments from interested persons on the NPA calculations for the 1985 crop of upland cotton, along with appropriate supporting data, are requested.

D. *Voluntary Reduction Percentage.* Section 103(g)(7) of the 1949 Act provides that the individual farm program acreages for the 1985 crop of upland cotton which are eligible for payments shall not be further reduced by application of an allocation factor if the producer reduces the acreage of upland cotton planted for harvest on the farm from the acreage base established for the farm for the 1985 crop of upland cotton by at least the percentage recommended by the Secretary in the proclamation of the national program acreage for the 1985 crop. If an acreage reduction program is implemented for the 1985 crop of upland cotton, the voluntary reduction percentage shall not be applicable to such crop. If required, the recommended national reduction percentage for the 1985–crop of cotton would be:

(a) 1985 esitmated upland cotton acreage base.	15,600,000.
(b) Minus 1985 NPA	10,008,421.
(c) Equals reduction needed from acreage base.	5,591,579.
(d) Divided by 1985 upland cotton acreage base.	15,600,000.
(3) Equals 1985 crop reduction percentage	36 percent.

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

E. *Whether an Acreage Reduction Program (ARP) Should be Established and, if so, the Percentage of Such Reduction and the Method of Establishing Acreage Bases.* (1) Except as provided in paragraph (2) below, section 103(g)(9)(A) of the 1949 Act provides that the Secretary may establish a limitation on the acreage planted to upland cotton if the Secretary determines that the total supply of upland cotton will, in the absence of such limitation, be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency.

(2) For the 1985 crop of upland cotton, if the Secretary estimates that the quantity of upland cotton on hand in the United States on July 31, 1985 (not including any quantity of upland cotton produced in the United States during calendar year 1985), will exceed 3.7 million bales, the Secretary: (a) Shall provide for a land diversion program as described under section 103(g)(9)(B) of the 1949 Act under which the acreage planted to upland cotton for harvest on the farm would be limited to the acreage base for the farm reduced by not less than 5 percent and (b) may provide for an acreage limitation program as described under section 103(g)(9)(A) of the 1949 Act under which the acreage planted to upland cotton for harvest on the farm would be limited to the acreage base for the farm reduced by not more than 20 percent in addition to the land diversion program. If the Secretary implements a combined acreage limitation program and land diversion program, any reduction required by the Secretary in excess of 25 percent of the acreage base for the farm shall be made under the land diversion program.

(3) If the Secretary implements a land diversion program or a combined acreage limitation and land diversion program, the producers on a farm must comply with the terms and conditions of such program as a condition of eligibility for loans, purchases, and payments on the 1985 crop of upland cotton.

(4) Any acreage limitation under paragraphs (1) and (2) shall be achieved by applying a uniform percentage reduction to the acreage base for each cotton-producing farm. Producers who knowingly produce cotton in excess of the permitted cotton acreage shall be ineligible for cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation shall be the acreage planted on the farm to upland cotton for harvest in the crop year immediately preceding the year for which the determination is made, or, at the discretion of the Secretary, the average acreage planted to upland cotton for harvest in the two crop years immediately preceding the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to upland cotton for harvest shall include any acreage which producers were prevented from planting to cotton or other nonconserving crop because of a natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect crop-rotation practices and other factors as the Secretary determines necessary to establish a fair and equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres actually planted to upland cotton, by (b) the number of acres authorized to be planted to upland cotton in accordance with the acreage limitation established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an acreage limitation is in effect for any crop, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(g) of the 1949 Act are not applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to upland cotton for harvest within the permitted upland cotton acreage established for the farm under the acreage reduction program.

(5) The need for an acreage reduction program under paragraphs (1) and (2) in 1985–86 will be determined by weather, supply, and use conditions affecting the 1984 crop. Projections as of May 1984 indicate that stocks on July 31, 1985, may be about 3.1 million bales. At this level of projected beginning stocks for the 1985–1986 season, a land diversion program would not be required and there would be no restrictions on the level of ARP. However, future developments in weather conditions, market trends, and projections of supply and use could affect the suitability of various program options for production adjustment and could affect the application of statutory provisions. Therefore, the program options considered at the final determination stage may vary depending upon conditions in existence and information available at that time.

(6) The options currently being considered for the 1985 Upland Cotton Program include no ARP, a 10 percent ARP, a 20 percent ARP and a 20 percent ARP combined with a 5 percent mandatory cash land diversion program.

(7) Interested persons are encouraged to comment on the need for an acreage reduction program for the 1985–crop of upland cotton and the appropriate percentage of any such reduction. Interested persons are also encouraged to comment on the method for establishing upland cotton acreage bases for the 1985 crop of upland cotton.

F. *Whether to Allow Haying and Grazing of Acreage Conservation Reserve (ACR) Acreage.* Section 103(g)(9)(A) of the Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion. The Secretary may authorize haying and

grazing of land devoted to acreage conservation reserve (ACR).

Interested persons are invited to comment on the provisions concerning the grazing and haying of ACR acreage.

G. *Whether Contracts Signed by the Producer Should Be Binding at the End of the Enrollment Period for the 1985 Upland Cotton Program.* For the 1984 Upland Cotton Program, contracts signed by program participants are considered to be binding contracts. The contracts also provide for liquidated damages in the event the producer does not fulfill the terms and conditions of the contract. This type of contract is also under consideration for the 1985 Upland Cotton Program.

Interested persons are requested to comment on the use of binding contracts for the 1985 Upland Cotton Program.

H. *Whether a Land Diversion Program Should Be Established and, if so, the Extent of Such Diversion and the Level of Payments.* (1) Except as provided in paragraph (2), section 103(g)(9)(B) of the 1949 Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not an acreage limitation for upland cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage to desirable goals. Such land diversion payments shall be made to producers who devote to conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers or in such manner as the Secretary determines appropriate.

(2) Notwithstanding the foregoing provisions, if the Secretary implements a land diversion program for the 1985 corp of upland cotton under the provisions of section 103(g)(9)(A) of the 1949 Act, the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of upland cotton whose acreage planted to upland cotton on the farm is reduced so that it does not exceed the upland cotton acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 percent, in addition to the reduction required under the acreage limitation program under section 103(g)(9)(A), if any, and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the upland cotton acreage base under section 103(g)(9)(B). Such payments shall be made in an amount computed by multiplying the diversion payment rate, by the farm program payment yield for the crop, by the acreage diverted. The diversion payment rate established by the Secretary under the provisions of this paragraph shall be not less than 27.5 cents per pound. If the Secretary estimates that the quantity of upland cotton on hand in the United States on July 31, 1985 (not including any quantity of upland cotton produced in the United States during calendar year 1985), will exceed (a) 4.1 million bales, such diversion payment rate shall be established by the Secretary at not less than 30.0 cents per pound, and, (b) 4.7 million bales, such diversion payment rate shall be established by the Secretary at not less than 35.0 cents per pound. The Secretary shall make not less than 50 percent of any diversion payments required to be made to producers of the 1985 crop as soon as practicable after a producer enters into a land diversion contract with the Secretary and in advance of any determination of performance. If a producer fails to comply with a land diversion contract after obtaining an advance payment, the producer shall repay the advance payment immediately and, in accordance with regulations issued the Secretary, pay interest on the advance payment.

(3) If the Secretary implements a land diversion program under either paragraph (1) or paragraph (2), the producers on a farm must comply with the terms and conditions of such program as a condition of eligibility for loans, purchases, and payments on the 1985 crop of upland cotton.

(4) As stated above, projections as of May 1984 indicate that stocks on July 31, 1985 may be about 3.1 million bales. At this level of estimated ending stocks, no land diversion program under paragraph (2) would be required. However, since it is likely that estimates will change before the program announcement date, an option which includes a 20 percent ARP and a 5 percent mandatory land diversion program with a payment rate of 27.5 cents per pound is being considered. Other options for a land diversion program may be considered if conditions change materially.

(5) Interested persons are encouraged to address the need for a land diversion program and the appropriate terms and conditions for a land diversion program.

I. *Whether to Require Offsetting Compliance if An Acreage Reduction Program is Established.* Section 103(g)(14) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the upland cotton program. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in which they had an interest were either in compliance with the program requirements or that the acreages of upland cotton planted for harvest on each of such farms did not exceed the upland cotton acreage bases which were established for such farms. Offsetting compliance was not in effect for the 1984 crop.

Interested persons are encouraged to comment on the need for offsetting compliance for the 1985-crop of upland cotton if an acreage reduction program is established.

J. *Loan Level for Upland Seed Cotton.* Section 103(g)(18) of the 1949 Act provides that in order to assist producers in the orderly ginning and marketing of their cotton production, the Secretary shall make recourse loans available to such producers on seed cotton in accordance with authority vested in the Secretary under the Cmmodity Credit Corporation Charter Act. Consideration is being given to the level at which loans should be made available for seed cotton under the 1985 program.

The loan level which is presently being considered for seed cotton is 100 percent of the loan level which is applicable for that location for lint cotton adjusted to a lint basis.

Comments from interested persons are requested on the appropriate loan level for seed cotton and the method of adjustment to a lint basis for the purpose of determining loan value.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

(Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 103(g)(1), 107C and 401, 66 Stat. 758, as amended, 95 Stat. 1234, as amended, 96 Stat. 766, 63 Stat. 1054, as amended (7 U.S.C. 1441, 1444, 1445b–2, 1421), Pub. L. 98–258)

Signed at Washington, D.C. on June 1, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

FR Doc. 84–15130 Filed 6–5–84; 8:45 am]

BILLING CODE 3410–05–M

Proposed Determinations With Regard to the 1985 Feed Grain Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1985 feed grain crops: (a) The loan and purchase levels; (b) the established (target) prices; (c) the national program acreages (NPA's); (d) whether a voluntary reduction percentage should be proclaimed and, if so, the percentage; (e) whether a set-aside program should be established and, if so, the percentage of such set-aside; (f) whether an Acreage Reduction Program (ARP) should be established and, if so, the percentage of such reduction and the method to be used in establishing the acreage bases; (g) whether a cash land diversion (CLD) program should be established and, if so, the percentage of acreage diversion and the level of payment; (h) whether barley should be determined to be eligible for payment purposes; (i) whether malting barley should be exempt from an ARP; (j) whether to permit haying and grazing of the land devoted to acreage conservation reserve (ACR); (k) provisions of the farmer-owned reserve (FOR) program; (l) whether to require offsetting compliance; (m) whether binding contracts should be required for producers desiring to participate in the 1985 Feed Grain Program; (n) whether non-recourse loans and purchases should be made available to producers who cut their corn crop for silage; and (o) other provisions. These determinations are to be made pursuant to the provisions of the Argricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act") and the Commodity Credit Corporation (CCC) Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before August 6, 1984, in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–4417. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance programs to which this notice applies are: Title-Feed Grain Production Stabilization: Number 10.055 and Title-Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Certain determinations set forth in this notice are required to be made by the Secretary for 1985 crop program purposes by September 30, 1984. In addition, it is necessary that the determinations for the 1985 crop program be made in sufficient time to permit feed grain producers to make adequate plans for the production of their crop.

The following proposed program determinations with respect to the 1985 crop of feed grains are to be made by the Secretary:

Proposed Determinations

a. *The Loan and Purchase Level for the 1984 Crop of Feed Grains.* Section 105B(a)(1) of the 1949 Act provides that the Secretary shall make available to producers loans and purchases for the 1985 crop of corn at such level, not less than $2.55 per bushel, as the Secretary determines will encourage the exportation of feed grains and not result in excessive total stocks of feed grains after taking into consideration the cost of producing corn, supply and demand conditions, and world prices for corn. If the Secretary determines that the average price of corn received by producers in any marketing year is not more than 105 percent of the level of loans and purchases for corn for such marketing year, the Secretary may reduce the level of loans and purchases for the next marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain, except that the level of loans and purchases shall not be reduced by more than 10 percent in any year nor below $2.00 per bushel.

Section 105B(a)(2) provides that the Secretary shall make available to producers loans and purchases for the 1985 crops of grain sorghum, barley, oats, and rye at such levels as the Secretary determines are fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of such commodity in relation to corn and certain other factors specified in section 401(b) of the 1949 Act. Loan and purchase levels per bushel being considered for the 1985 feed grain crops range from $2.30 to $2.55 for corn; $2.19 to $2.42 for grain sorghum; $1.87 to $2.08 for barley; $1.18 to $1.31 for oats; and $1.96 to $2.17 for rye.

Comments on the level of loans and purchase rates for the 1985 crop of feed grains, along with supporting data, are requested from interested persons.

(b) *The Established (Target) Price Level for the 1985 Crop of Feed Grains.* Section 105B(b)(1)(C) of the 1949 Act provides that the established (target) price for corn shall not be less than $3.03 per bushel for the 1985 crop. Any such established (target) price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable cost, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop. The only established (target) price level under consideration for the 1985 corn crop is the minimum statutory level of $3.03 per bushel.

Sectiuon 105B(b)(1)(E) of the 1949 Act provides that the payment rate for grain sorghum, oats,a nd, if designated by the Secretary, barley, shall be such rate as the Secretary determines fair and reasonable in relation to the rate at which payments are made available for corn.

Comments are requested from interested persons as tot he level of the established (target) prices for the 1985 crops of feed grains along with supporting data.

C. *The National Program Acreages (NPA's).* Section 105B(c)(1) of the 1949 Act provides that the Secretary shall proclaim NPA's for the 1985 crop of feed grains not later than September 30, 1984. The NPA's for feed grains shall be the

number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the 1985 crops) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for exports during the 1985/86 marketing year. If the Secretary determines that carryover stocks of feed grains are excessive or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the NPA's by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA's first proclaimed if the Secretary determines it is necessary to accomplish the desired carryover stock adjustment. If an ARP is implemented for the 1985 crop of feed grains, the NPA's shall not be applicable to such crop.

The U.S. feed grain stock objective, an amount judged to be a "fair" share of world coarse grain carryover stocks, has been determined to be equal to approximately 6.25 percent of estimated world consumption of coarse grains (this represents the approximate 18-year average of the ratio of U.S. stocks to world consumption) or approximately 49 million metric tons of the 1984/1985 marketing year, with a nominal make-up of corn, 76 percent; sorghum, 9 percent; barley, 8 percent; and oats, 7 percent.

Based upon current projections, the likely NPA's, if required, for the 1985 crops of corn, sorghum, barley, and oats would be:

	Corn	Sorghum	Barley	Oats
	Million bushels			
a. Estimated Domestic Use, 1985/86	5,495	445	420	515
b. Plus Estimated Silage Use, 1985/86	635	50	.....	.....
c. Plus Estimated Exports, 1985/86	2,075	200	70	5
d. Minus Estimated Imports, 1985/86	1	.....	10	1
e. Plus or Minus Stock Adjustment [1]	+339	−158	−63	+70
f. Total	8,543	537	417	589
	Bushels/Acre			
g. Divided by National Weighted Average Farm Program Payment Yield	105.0	54.5	49.0	54.5
	Million acres			
h. Equals 1985 Crop NPA's	81.4	9.9	8.5	10.8

[1] In million bushels.

	Corn	Sorghum	Barley	Oats
a. Estimated 1985/86 Beginning Stocks	1,121	338	243	165
b. Minus about 6.25 percent of 1985/86 World Consumption of Coarse Grains	1,460	180	180	235
c. Equals Desired Stock Adjustment	+339	−158	−63	+70

No NPA's were announced for the 1984 crop of feed grains because the NPA provisions do not apply when an ARP is in effect. Comments on the NPA's and the appropriate stocks level for the 1985 crop of feed grains, along with appropriate supporting data, are requested from interested persons.

d. *Whether a Voluntary Reduction Percentage Should be Proclaimed and, if so, the Level of Such Voluntary Reduction Percentage.* Section 105B(c)(2) provides that when an NPA is in effect the Secretary shall determine an allocation factor for each crop of feed grains. The allocation factor for feed grains shall be determined by dividing the NPA for the crop by the number of acres the Secretary estimates will be harvested for such crop, except that in no event shall the allocation factor be more than 100 percent or less than 80 percent.

Section 105B(c)(3) provides that when an NPA is in effect the individual farm program acreage for each crop of feed grains shall be determined by multiplying the allocation factor by the acreage of feed grain planted for harvest on the farms for which individual farm program acreages are required to be determined. The farm program acreage shall not be further reduced by application of the allocation factor if the producers reduce the acreage of feed grains planted for harvest on the farm from the acreage base established for the farm by at least the percentage recommended by the Secretary in the proclamation of the NPA. If an ARP is implemented for the 1985 crop feed grains, the voluntary reduction percentage shall not be applicable to such crop.

If required, the likely recommended national reduction percentage for the 1985 crop of feed grains would be:

	Corn	Sorghum	Barley	Oats
	Million acres			
a. 1985 Estimated Acreage Base	84.0	18.5	11.8	10.0
b. Minus 1985 Preliminary NPA	81.4	9.9	8.5	10.8
c. Equals Acreage Reduction Needed from Acreage Base	2.6	8.6	3.3	−0.8
d. Divided by 1985 Acreage Base	84.0	18.5	11.8	10.0
e. Equals 1985 Crop Recommended Reduction Percentage	3.1	46.5	28.0	0

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

e. *Whether a Set-Aside Program Should Be Established and, if so, the Percentage of Such Set-Aside.* Sections 105B(e) (1) and (3) of the 1949 Act provide that the Secretary may establish a set-aside program for the 1985 crop of feed grains if the Secretary determines that the total supply of feed grains, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such feed grain set-aside program not later than September 30 of the year prior to the calendar year in which the crop is harvested. If a set-aside program is announced, the producers on a farm must, as a condition of eligibility for loans, purchases, and payments, set-aside and devote to conservation uses an acreage of crop land equal to a specified percentage, as determined by the Secretary, of the acreage of feed grains planted for harvest of the crop for which the set-aside is in effect. The set-aside acreage shall be devoted to conservation uses in accordance with regulations issued by the Secretary. If a set-aside program is established, the Secretary may limit the acreage planted to feed grains. Such limitation shall be applied on a uniform basis to all feed grain-producing farms. The Secretary may make such adjustments in individual set-aside acreages as the Secretary determines necessary to correct for abnoraml factors affecting production, and to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and water conservation measures, topography, and such other factors as the Secretary deems necessary

Interested persons are encouraged to comment on the need for a 1985 Feed Grain Set-Aside Program and, if so, the appropriate percentage of acreage to be reduced.

f. *Whether an Acreage Reduction Program (ARP) Should Be Established and, if so, the Percentage of Such Reduction and the Method of Establishing Acreage Bases.* Sections 105B(e) (1) and (2) of the 1949 Act provide that the Secretary may establish an ARP for the 1985 crop of feed grains if the Secretary determines that the total supply of feed grains, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Section 105B(e)(1)(c) of the 1949 Act provides that if the Secretary estimates that the quantity of corn on hand in the United States on September 30, 1985 (not including any quantity of corn produced in the United States during calendar year 1985) will exceed 1.1 billion bushels, the Secretary shall provide for a CLD program of not less than 5 percent and may provide for an ARP. If the Secretary implements a combined CLD program and an ARP, the

total reduction required by the Secretary shall not exceed 20 percent. Any reduction required in excess of 15 percent shall be equally apportioned between a CLD program and an ARP. The Secretary shall announce whether an ARP is to be in effect for the 1985 crops of corn, sorghum, oats and, if designated, barley by not later than September 30, 1984. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each feed grain-producing farm. Producers who knowingly produce feed grains in excess of the permitted feed grain acreage for the farm shall be ineligible for feed grain loans, purchases, and payments with respect to that farm.

The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation shall be the acreage planted on the farm to feed grains for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to feed grains for harvest in the two crop years immediately preceding the year for which the determination is made. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secrtary determines should be considered in determining a fair and equitable base. In addition, a number of acres on the farm determined by dividing (1) the product obtained by multiplying the number of acres required to the withdrawn from the production of feed grains times the number of acres actually planted to feed grains by (2) the number of acres authorized to be planted to feed grains under a limitation established by the Secretary, shall be devoted to conservation uses in accordance with regulations issued by the Secretary.

The need for an acreage reduction program for feed grains in 1985 will depend on the 1984 feed grain crop supply, use and carryover levels. It is estimated that the 1984 corn planted acreage could be increased by about 35 percent. The overall 1984 crop plantings of feed grains may be about 16 to 18 percent larger than the previous year. Total 1984/85 feed grain production is projected to be up approximately 75 percent from the 1983 crop production which, because of the Payment-In-Kind (PIK) Program and the drought, totaled 137 million metric tons.

Domestic feed grain use for 1984/85 will be approximately 158 million metric tons, about 3 percent more than for 1983/84. Projected U.S. feed grain exports of 57 to 58 million tons are likely to increase 2 to 3 percent from 1983/84 but would still be 14 million tons below record feed grain exports during 1979/80.

Total feed grain use for 1984/85 will be approximately 216 million tons, 6 million tons greater than 1983/84. Total feed grain use for 1981/82, 1982/83, and 1983/84, respectively, was 215 million tons, 225 million tons, and 210 million tons. The small 1983 crops, resulting from a combination of the PIK Program and the drought, resulted in a sharp increase in feed grain prices. The shortened supply and higher prices resulted in about a 13 percent reduction in domestic feed fed from 1982/83.

Ending stocks for 1984/85 are estimated to be about 45 million tons, almost double the projected 1983/84 carryover of about 26 million tons. The stock-to-use ratio of 21 percent of 1984/85 is considered a desirable level and compares with 12 percent for 1983/84, 44 percent for 1982/83, 32 percent for 1981/82, and 20.5 percent average during the last 10 years.

World feed grain trade in 1983/84 is projected to total about 93 million tons, somewhat improved from the preceding year, but still below the record 1980/81 level of 108.8 million tons. U.S. feed grain exports for 1983/84 are expected to increase about 4 percent over the previous year, or from 54 million tons to an estimated 56 million tons. Corn exports are estimated to increase from the 1982/83 level of 1,870 million bushels to 1,900 millon bushels in 1983/84, but remain considerably below the record, 2,433 million bushels exported in 1979/80. World feed grain trade is expected to grow modestly in 1984/85, while U.S. corn exports in 1984/85 are expected to increase about 5 percent. The pattern of a modest growth in world import demand matched against growing exportable supplies is likely to continue into 1985/86. The major exporting countries can be expected to continue to explore numerous initiatives in order to maintain feed grain exports. Any major developments in world feed grain production or in import demand, particularly in countries such as the Soviet Union and South Africa, could alter the outlook for U.S. feed grain exports over the next two years.

If supply and demand factors continue as currently projected for 1984/85, the 1984/85 outlook is one of increasing supplies and downward pressure on prices. Ending carryover stocks of corn could increase by 600 million to 800 million bushels. Total feed grain carryover could increase from 26 million metric tons to 45 million metric tons. These amounts are not considered excessive. However, much of the stock supply will be in "free stocks", or readily available to the market, and could exert downward pressure on feed grain prices.

With a program for the 1985 crop providing for a 5 percent CLD program combined with a 10 percent ARP, the harvested acreage for the 1985 crops of feed grains is estimated to decrease about 2 percent from the 1984 level. Assuming trend yields, production of the 1985 crop of feed grains is estimated to be about the same as the 235 million metric tons projected for the 1984 crop. With this level of production and estimated beginning stocks of about 45 million metric tons, the total supply of feed grains for 1985/86 is projected at about 286 million tons, or approximately 10 percent more than for the 1984/85 supply. Domestic use in 1985/86 is projected to increase about 5 percent and exports about 3 to 4 percent. This level of use should result in feed grain ending stocks of about 59 million tons, or about one-third greater than the 1984/85 carryover.

The above outlook suggests the implementation of a CLD program in combination with an ARP for the 1985 feed grain crop. However, later crop developments throughout the world could materially change this outlook. Options under consideration at this time include: (1) A 5 percent CLD program and a 10 percent ARP; (2) a 5 percent CLD program and a 5 percent ARP; and (3) a 7.5 percent CLD program and a 12.5 percent ARP. The analysis for these options assume a $3.03 per bushel corn established (target) price and a corn loan rate of $2.55 per bushel.

Since the Secretary may establish an ARP regardless of the quantity of corn estimated to be on hand on September 30, 1985, interested persons are encouraged to comment on the need for an ARP for the 1985 crop of feed grains as follows: (1) In combination with a mandatory CLD program; and (2) without regard to a mandatory CLD program. Comments are also requested on the appropriate percentage of any required reduction and the method for establishing 1985 crop feed grain bases.

g. *Whether a Cash Land Diversion Program should established and, if so, the percentage of acreage diversion and the level of payment.* Section 105B(e)(5) of the 1949 Act, authorizes the Secretary to make diversion payments to producers of feed grains if the Secretary determines that such payments are necessary to assist in adjusting the total national acreage of feed grains to

desirable goals. Section 105B(e)(5) of the 1949 Act also provides that the Secretary shall implement a CLD program if the Secretary estimates that the quantity of corn on hand in the United States on September 30, 1985 (not including any quantity of corn, produced in the United States during calendar year 1985) will exceed 1.1 billion bushels.

In accordance with section 105B(e)(5) of the 1949 Act, the required reduction under a CLD program would be 5 percent. If an ARP is also implemented, any required reduction in excess of 15 percent of the farm acreage base would be equally apportioned between the CLD program and the ARP. The CLD program payment rate for the 1985 crop of corn shall be established by the Secretary at not less than $1.50 per bushel. The Secretary shall make not less than 50 percent of the CLD program payments to producers of the 1985 crop of feed grains as soon as practicable after a producer enters into a CLD contract and in advance of any determination of performance.

Interested parties are invited to comment on the need for CLD program as follows: (1) If the Secretary estimates that quantity of corn on hand on September 30, 1985, is less than 1.1 billion bushels; and (2) if such estimate exceeds 1.1 billion bushels, the need for the implementation of CLD program which would require a reduction in excess of the mandatory 5 percent CLD program. Comments are also requested with respect to the provisions of such a program. Comments should include supporting data.

h. *Whether Barley Should be Determined to be an Eligible Commodity for Payment Purposes Under the Feed Grain Program.* Section 105B(b)(1)(E) of the 1949 Act gives the Secretary discretionary authority for the inclusion of barley as a commodity which is eligible for payments under the feed grain program. In the past, barley has been included as an eligible commodity with the exception of the 1967, 1968 and 1971 programs. If barley were not included in the 1985 program, barley producers would not be eligible to receive payments under the feed grain program for their crops but would be eligible for the price support loan and purchase program and farmer-owned grain reserve programs.

While barley planted acreage has been reduced slightly over the past few years, trend yield increases have maintained barley supplies of 600 to 650 million bushels with normal weather conditions. The 1983 crop of 519 million bushels was 3 million below the 1982 record barley crop. Barley demand has remained fairly stable Carryover stocks of barley during the 1984/1985 crop year are projcted to total 238 million bushels which is considered above the level most interested parties would deem adequate.

Interested persons are encouraged to comment on barley being included as a commodity for which payments can be made under the 1985 Feed Grain Program.

i. *Whether Malting Barley Should be Exempt from an Acreage Reduction Program if there is Such a Program.* Under section 105B(e)(2) of the 1949 Act, the Secretary may provide that no producer of malting barley shall be required as a condition of eligibility for feed grain loans, purchases, and payments to comply with any acreage limitation if such producer has previously produced a malting variety of barley plants barley only of an acceptable malting variety for harvest, and meets other conditions as the Secretary may prescribe. Malting barley varieties have not been exempt from acreage limitation requirements in the past.

Comments from interested persons with respect to the malting barley exemption, if any, are requested.

j. *Whether to Allow Haying and Grazing of Land Devoted to Acreage Conservation Reserve (ACR).* Section 105B(e)(4) of the 1949 Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion. The Secretary may authorize haying and grazing of land devoted to ACR.

Interested persons are invited to comment on the provisions concerning the grazing and haying of ACR acreage.

k. *Provisions of the Farmer-Owned Reserve (FOR).* Section 110 of the 1949 Act provides that the Secretary shall formulate and adminster a program under which producers of feed grains will be able to store such feed grains when they are in abundant supply and extend the time for their orderly marketing. The Secretary shall provide for original or extended price support loans at such level of support as the Secretary determines appropriate, except that the loan rate shall not be less than the current level of price support provided for under the feed grain program established in accordance with Section 105B of the 1949 Act. The program may provide for: (1) Repayment of such loans in not less than three years nor more than five years; (2) payments to producers for storage in such amounts and under such conditions as are determined to be appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate of interest charged CCC by the United States Treasury, except that the Secretary may waive or adjust such interest as the Secretary deems appropriate; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers before the market price for feed grains has reached the trigger release level; and (5) conditions designed to induce producers to redeem and market the feed grains securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the commodity has attained a specified level (i.e., the "trigger release level"), as determined by the Secretary. The Secretary shall announce the terms and conditions of the producer storage program as far in advance of making loans as practicable. In such announcements, the Secretary shall specify the quantity of feed grains to be stored under the program which the Secretary determines appropriate to promote the orderly marketing of feed grains. The Secretary may place an upper limit on the amount of feed grains placed in the reserve but such upper limit may not be less than 1 billion bushels of feed grains.

The following options are under consideration with respect to the FOR for the 1985 crop of feed grains: (a) Providing for an extended price support loan which is equal to the applicable regular price support loan for the 1985 crop of feed grains; (b) providing for a storage payment rate in a range of 0 to 26.5 cents per bushel for all crops except oats, which would be in a range of 0 to 20 cents per bushel; (c) charging producers, who have pledged feed grains as collateral for a loan under the FOR, interest for the first year at the prevailing rate the United States Treasury charges CCC for its borrowings and waiving interest for the second and third years; (d) providing for a corn trigger release level of $3.25 per bushel or a trigger release level at the same level as the target price level for corn (sorghum, barley and oats trigger release levels would approximate their feed value relationship to corn); (e) providing that a producer may not place feed grain into the FOR until after maturity of the 9-month regular price support loan; and (f) placing an upper limit on the quantity of feed grains entering the reserve program at the minimum 1 billion bushels of feed grains or placing no upper limit on the quantity

of feed grains entering the reserve program.

Interested persons are encouraged to comment on these or other options dealing with the provisions of the FOR for the 1985 crop of feed grains.

l. *Whether to Require Offsetting Compliance if an Acreage Reduction Program is Established.* Section 105B(g) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the feed grain program. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in which they had an interest were either in compliance with the program requirements or the acreages of feed grains planted to harvest on each of such farms did not exceed the feed grain acreage bases which were established for such farms. Offsetting compliance was not in effect for the 1984 crop.

Interested persons are encouraged to comment on the need for offsetting compliance for the 1985 crop of feed grains if an ARP is established.

m. *Whether Binding Contracts Should be Used for the 1985 Feed Grain Program.* For the 1984 Feed Grain Program, contracts signed by program participants were considered to be binding contracts. The contracts also provided for liquidated damages in the event the producer did not fulfill the terms and conditions of the contract. This type of contract is also under consideration for the 1985 Feed Grain Program.

Interested persons are requested to comment on the use of binding contracts for the 1985 Feed Grain Program.

n. *Whether Non-Recourse Loans and Purchases Should be Included for Corn Silage Grain Equivalent.* The Agricultural Programs Adjustment Act of 1984 amended section 105B(a) of the 1949 Act to provide that the Secretary may make available loans and purchases to participating producers who cut the corn crop for silage.

Such loans and purchases may be made on the quantity of corn of the same crop, other than the corn cut for silage, which is acquired by the producer and which is equal to the acreage cut for silage multiplied by the lower of the farm program yield or the actual yield on a field, as determined by the Secretary, that is similar to the field from which silage was obtained. Corn which is to be substituted for corn cut for silage could either be purchased in the market or produced by the producer on a non-complying farm.

In 1983, approximately 8 million acres of corn was cut for silage with about 50 percent of silage production occurring in seven States: Wisconsin, Minnesota, New York, Pennsylvania, Iowa, South Dakota and Nebraska. These States also represent major areas of livestock, especially dairy production.

Interested persons are encouraged to comment on whether non-recourse loans and purchases should be available for corn silage grain equivalent in accordance with the 1985 Feed Grain Program. Comments should also include apporpriate supporting data.

o. *Other Related Provisions.* A number of other determinations must be made in carrying out the feed grain loan and purchase programs such as: (a) Commodity eligibility; (b) premiums and discounts for grades, classes, and other qualities; (c) establishment of county loan and purchase rates; and (d) such other provisions as may be necessary to carry out the programs.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Signed at Washington, D.C., on June 1, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-15128 Filed 6-5-84; 8:45 am]

BILLING CODE 3410-05-M

Proposed Determinations With Regard to the 1985 Rice Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Proposed Determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1985 crop of rice: (a) The loan and purchase rate; (b) the established (target) price; (c) the national program acreage (NPA); (d) whether a voluntary reduction percentage should be proclaimed and, if so, the level of such percentage reduction; (e) whether an acreage reduction program should be established and, if so, the percentage of reduction and the method to be used in establishing the acreage bases; (f) whether a land diversion program should be established and, if so, the extent of such diversion and the level of payment; (g) whether to permit haying and grazing of the acreage conservation reserve if an acreage reduction or land diversion program is established; (h) whether to require offsetting compliance if an acreage reduction program is established; and (i) other provisions. The determinations are required to be made in accordance with provisions of the Agricultural Act of 1949, as amended, (hereinafter referred to as the "Act").

DATE: Comments must be received on or before August 6, 1984, to be assured consideration.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Eugene S. Rosera, Agricultural Economist, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, or call (202) 447–4634. A Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these program provisions will affect the supply and price of rice during the 1985/86 marketing year, which will in turn impact upon producers, processors, exporters and consumers of rice.

The titles and numbers of the federal assistance programs to which this notice applies are: Title-Rice Production Stabilization, Number 10.065, and Title-Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determinations since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The following proposed program determinations are to be made with respect to the 1985 crop of rice:

Proposed Determinations

1. *The Loan and Purchase Rate.* Section 101(i)(1) of the Act provides that the Secretary of Agriculture shall make available to producers in the several States of the United States loans and purchases for the 1985 crop of rice at such level as bears the same ratio to the loan level for the 1984 crop as the established price for the 1985 crop of

rice bears to the established price for the 1984 crop. The loan and purchase rate for the 1985 crop of rice shall be established on the basis of the 1984 loan rate prior to any adjustments. If the Secretary determines that loans and purchases at the foregoing level would substantially discourage the exportation of rice and result in excessive stocks of rice in the United States, the Secretary may establish loans and purchases at such level, not less than $8.00 per hundredweight, as the Secretary determines necessary to avoid such consequences.

Section 403 of the Act provides that appropriate adjustments may be made in the support price for differences in grade, type, and other factors. Section 403 further provides that such adjustments shall, so far as practicable, be made in such manner that the average support price for such commodity will, on the basis of the anticipated incidence of such factors, be equal to the level of support. For the 1984 crop of rice, the loan and purchase rate differential was established to reflect the relative incidence of production and market prices differences by class for whole and broken kernels. Grade discounts were also established based on commercial discounts for grading factors. Milling outturns used for calculating initial farm-stored loan rates were based on estimates of national average milling outturns for classes of rice.

The following loan and purchase levels are currently being considered for the 1985 crop of rice: (a) $8.93 per hundredweight, the rate calculated in accordance with the statutory formula; and (b) $8.00 per hundredweight, the statutory minimum loan rate. Export utilization for Marketing Year (MY) 1985/86 is forecast to decline from the forecast MY 1984/85 level should the 1985-crop loan and purchase rate be established by the statutory formula.

Under the regulations which govern the current rice loan and purchase program (i.e. 7 CFR 1421.311), all loans mature on demand or April 30th of the marketing year in which the loan was made. This common maturity date provides some producers a 9-month loan period and others, who harvest later in the year, only a 5-month loan period. By comparison, all wheat and feed grains producers are provided a 9-month loan period because all such "anniversary" loans mature on demand or the last day of the ninth month following the month in which the loan was dispersed. The maturity period for all loan program participants could be equalized by establishing anniversary type loans for all States, or by establishing a separate loan maturity date for each State or production area (Southern States and California) based on the common harvesting period for such State or area. Should such provisions be established for the 1985-crop loan program, 7 CFR 1421.311 would be amended accordingly.

Comments, along with supporting data, are requested as to: (a) The national average loan and purchase rate for the 1985 crop of rice; (b) the loan and purchase rate for broken kernels and for different types of whole kernels; (c) the level of grade discounts appropriate for the 1985 crop of rice; (d) appropriate national average quality and milling outturns for use in determining initial farm-stored loan rates by class and (e) establishing either a 9-month anniversary loan program for all rice loans or separate loan maturity dates by State or production area.

2. *The Established (Target) Price.* Section 101(i)(2)(C) of the Act provides that the established price for rice shall be not less than $11.90 per hundredweight for the 1985 crop. Such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (a) the average adjusted cost of production per acre for the two crop years (1983 and 1984) immediately preceding the year for which the determination is made from (b) the average adjusted cost of production per acre for the two crop years (1982 and 1983) immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable costs, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

Comments are requested on the level of the established (target) price for the 1985 crop of rice.

3. *National Program Acreage (NPA).* Section 101(i)(4)(A) of the Act provides that the Secretary shall proclaim an NPA for the 1985 crop of rice not later than January 31 of each calendar year for the crop harvested in that calendar year. The NPA for rice shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm established yields for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the MY 1985/86. If the Secretary determines that carryover stocks of rice are excessive or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the NPA by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA first proclaimed if the Secretary determines it is necessary based upon the latest information. If an acreage reduction program is implemented for the 1985 crop of rice, the NPA shall not be applicable to such crop. If required, the likely NPA for the 1985 crop of rice would be:

a. Estimated domestic use, 1985/86.	74.0 million hundredweight.
b. Plus estimated exports, 1985/86.	62.0 million hundredweight.
c. Minus imports	1.1 million hundredweight.
d. Minus stock adjustment.	0.0 million hundredweight.
e. Divided by national weighted average farm program payment yield.	49.25 hundredweigth/acre.
f. Equals 1985 crop NPA.	2.74 million acres.

Comments on the NPA and the appropriate carryover stock level for the 1985 crop of rice, along with supporting data, are requested.

4. *Whether a voluntary Reduction Percentage Should Be Proclaimed and, if so, the Level of Such Voluntary Reduction Percentage.* Section 101(i)(4)(C) provides that the 1985 individual farm program acreage of rice eligible for payments shall not be reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer voluntarily reduces the acreage of rice planted for harvest on the farm from the 1985-crop established rice acreage base by at least the percentage recommended by the Secretary in the proclamation of the NPA for the 1985 crop.

If an acreage reduction program is implemented for the 1985 crop of rice, the voluntary reduction percentage shall not be applicable to such crop. If required, the likely national recommended voluntary reduction percentage for the 1985 crop of rice would be:

a. 1985 established rice acreage base.	4.30 million acres.
b. Minus 1985 preliminary npa	2.74 million acres.
c. Equals acreage reduction needed from acreage base.	1.58 million acres.
d. Divided by 1985 rice acreage base.	4.30 million acres.
e. Equals 1985-crop recommended reduction percentage.	26.28 million acres.

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

5. *Whether an Acreage Reduction Program (ARP) Should Be Established*

and, if so, What Percentage. (a) Except as provided in paragraph (b) below, section 101(i) (5) (A) of the Act provides that the Secretary may establish a limitation on the acreage planted to rice if the Secretary determines that the total supply of rice, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover of maintain reasonable and stable supplies and prices and to meet a national emergency.

(b) For the 1985 crop of rice, if the Secretary estimates that the quantity of rice on hand in the United States on July 31, 1985 (not including any quantity of rice produced in the United States during calendar year 1985), will exceed twenty-five million hundredweight, the Secretary shall provide for a combination of an acreage limitation program and a land diversion program under which the acreage planted to rice for harvest on the farm would be limited to the acreage base for the farm reduced by a total of not less than 25 percent, consisting of a reduction of 20 percent under the acreage limitation program and a reduction under the land diversion program equal to the difference between the total reduction for the farm and the 20 percent reduction under the acreage limitation program.

(c) Any acreage limitation under paragraphs (a) and (b) shall be achieved by appling a uniform percentage reduction to the acreage base for each rice-producing farm. Producers who knowingly produce rice in excess of the permitted rice acreage for the farm shall be ineligible for rice loans, purchases and payments with respect to that farm. If an acreage reduction program is in effect for any crop, the national program acreage, voluntary reduction percentage, program allocation factor, and the application of the program allocation factor to the individual farm program acreage will not be applicable to such crop.

(d) Section 101(i) (5) (A) of the Act further provides that the acreage base for any farm for the purpose of determining any reduction required to be made for any year shall be the acreage planted on the farm to rice for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to rice for harvest in the two crop years immediately preceding the year for which the determination is made. Acreage planted to rice for harvest shall include any acreage which the producers were prevented from planting to rice or other nonconserving crop in lieu of rice because of drought, flood, or other natural disaster, or other condition beyond the control of the producers.

(e) The Secretary may permit all or any part of the reduced acreage to be devoted to sweet sorghum, hay and grazing or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

(f) The need and level for any acreage reduction program or any acreage reduction/paid diversion program under paragraphs (a) and (b) for the 1985 crop of rice will be based on estimates of MY 1984/85 ending stocks and domestic and export utilization for MY 1985/86. Beginning stocks for MY 1984/85 are forecast at 42.9 million hundredweight. The 1984 crop planted and harvested acreages are estimated at 3.150 and 3.130 million acres respectively. Based on an estimated harvested yield of 4,750 pounds per acre, 1984 production is forecast at about 149.0 million hundreweight resulting in a total supply, including imports, of 192.6 million hundredweight.

(g) Domestic rice use (including residual use) for MY 1984/85 is forecast to be approximately 70.0 million hundredweight, up about 4.5 percent from estimated domestic use for MY 1983/84. Export utilization is forecast at 62.0 million hundreweight, unchanged from the MY 1983/84 estimate. U.S. exports are not expected to increase substantially as long as supported U.S. rice prices exceed world prices by an excessive margin. Based on these estimates, ending stocks of rice for MY 1984/85 ae likely to be 60.6 million hundredweight, a 41 percent increase over MY 1983/84 ending stocks.

(h) Without some acreage reduction program for the 1985 crop of rice, it is estimated that planted rice acreage could reach about 4.0 million acres. Such plantings could be expected because of the profitability of rice compared with competing crops. With plantings at this level, and harvested yields of 4,900 pounds per acre, production could reach about 195 million hundredweight. This level of production, combined with beginning stocks and imports, would result in a total supply for MY 1985/86 of about 256.0 million hundredweight. Total utilization of rice for MY 1985/86 is forecast at about 135.0 million hundredweight. Domestic and residual use are forecast to increase about 4 percent to 73 million hundredweight while export use is increase about 4 percent to 73 million hundredweight while export use is forecast to be unchanged from MY 1984/85 estimated exports of 62.0 million hundredweight. These levels of utilization would result in ending stocks of about 121 million hundredweight-about 90 percent of total utilization for the year.

(i) The acreage reduction options under consideration at this time are a 20 percent acreage reduction program combined with (a) a 5 percent land diversion program; (b) a 15 percent land diversion program; and (c) a 20 percent land diversion program. Also under consideration is the establishment of 1985 rice acreage bases on the basis of the average of the acreages of rice which are planted and considered planted acreages for 1983 and 1984.

(j) Comments and supporting data are requested on (a) whether an acreage reduction program should be established for the 1985 crop of rice, and, if so, the appropriate level of such acreage reduction program; (b) the appropriate level of MY 1985/86 ending stocks which is not considered excessive; (c) the procedure for establishing the 1985 rice acreage base for any farm; and, (d) the type of crop(s), if any, which should be allowed to be planted on the reduced acreage.

(k) In addition, comments are requested as to whether producers who desire to participate in the rice program should be required to execute binding contracts at the time of enrollment in the program. Binding contracts should aid in deterring producers from failing to comply with the terms and conditions of the program at a later time.

6. *Whether to Allow Haying and Grazing of the Acreage Conservation Reserve.* Section 101(i)(5)(A) of the Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion. The Secretary may authorize haying and grazing of land devoted to acreage conservation reser. (ACR).

Interested persons are invited to comment on the provisions concerning the grazing and haying of ACR acreage.

7. *Whether a Cash Land Diversion Program Should Be Established, and, if so, the Extent of Such Diversion and the Level of Payments.* (a) Except as provided in paragraph (b) below, section 101(i)(5)(B) of the Act provides that the Secretary may make cash land diversion payments to producers of rice, whether

or not an acreage limitation for rice is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

(b) If the Secretary implements a land diversion program for the 1985 crop of rice under the provisions of section 101(i)(5)(A) of the Act, the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of rice whose acreage planted to rice for harvest on the farm is reduced so that it does not exceed the rice acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 percent, in addition to the reduction required under the acreage limitation program under section 101(i)(5)(A), and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the rice acreage base under the land diversion program. For the 1985 crop of rice, the payment rate for a land diversion program established under section 101(1)(5)(A) or section 101(i)(5)(B) of the Act shall be established by the Secretary at not less than $2.70 per hundredweight for the 1985 crop of rice. If the Secretary estimates that the quantity of rice on hand in the United States on July 31, 1985 (not including any quantity of rice produced in the United States during calendar year 1985), will exceed (a) thirty-five million hundredweight, such rate shall be established by the Secretary at not less than $3.25 per hundredweight, and (b) forty-two million five hundred thousand hundredweight, such rate shall be established by the Secretary at not less than $3.50 per hundredweight. The land diversion options under consideration at this time are (1) a 5 percent land diversion program combined with a 20 percent acreage reduction program; (2) a 15 percent land diversion program combined with a 20 percent acreage reduction program; and (3) a 20 percent land diversion program combined with 20 percent acreage reduction program.

(c) Interested persons are encouraged to comment regarding (a) whether a paid diversion program should be established for the 1985 crop of rice, and, if so, the appropriate level of such land diversion program; (b) the appropriate land diversion program payment rate; and (c) estimated producer participation under the options being considered.

8. *Whether to Require Offsetting Compliance.* Section 101(i)(9) of the Act provides that the Secretary may issue such regulations as the Secretary determines necessary to carry out the rice program. If offsetting compliance is required by the Secretary, owners and operators of farms would have to assure that all of the farms in which they have an interest are in compliance with program requirements which are specified with respect to the rice program (e.g., planting within the rice acreage bases established for the farms), in order to be eligible for program benefits. Offsetting compliance was not in effect for the 1984 crop of rice.

Interested persons are encouraged to comment on the need for the Secretary to require offsetting compliance for the 1985 corp of rice.

9. *Other Related Provisions.* Interested persons are encouraged to comment on other determinations which must be made in carrying out the rice loan and purchase programs such as: (a) Commodity eligibility; (b) storage requirements; and (c) such other provisions as may be necessary to carry out the programs.

Signed at Washington, D.C. June 1, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-15129 Filed 6-5-84; 8:45 am]

BILLING CODE 3410-05-M

1984 Peanut Program; Notice of Determination

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination—1984-crop peanut price support differentials.

SUMMARY: This notice of determination sets forth specific price support loan and purchase rates for the 1984-crop of quota and additional peanuts which reflect adjustments for differences in type, quality, location and other factors. These adjusted loan and purchase rates apply to both warehouse-stored loans, farm-stored loans and purchases. The adjustments are made in accordance with section 403 of the Agricultural Act of 1949 (the "1949 Act").

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Solomon J. Whitfield, Tobacco and Peanuts Division, ASCS, USDA, Room 5727 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5754. The final analysis describing options considered in developing this determination and the impact of implementing such options is available upn request from Mr. Whitfield.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that this determination will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this determination applies are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Comodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

On the basis of an environmental evaluation, it has been determined that this action will have no significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitats, water quality, air quality, and land use and appearance. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Under the provisions of section 108A of the 1949 Act, the Secretary is required to anounce price support levels for quota peanuts (peanuts marketed under a quota held by or acquired by the producer) and additional peanuts (nonquota peanuts). The 1984 quota support level of the $550 per ton and the additional support level of $185 per ton were announced on February 15, 1984. Section 403 of the 1949 Act provides that adjustments may be made in these support levels for type, quality, location and other factors. Section 403 also provides that on the application of such adjustments the average level of support shall, to the extent practicable and based on the expected incidence of the factors on which the adjustments are made, be equal to the support level anounced by the Secretary for the crop year involved.

A Notice of Proposed Determination regarding adjustments (or "differentials") in the levels of price support for the 1984-crop of peanuts was published in the **Federal Register** on March 1, 1984 (49 FR 7613). In that notice, it was proposed that the premium for extra large kernels (ELKs) of Virginia-type peanuts would be reduced from the 1983-crop level of 45 cents per percentage ELKs in a farmers stock ton to 35 cents per such percentage. In addition, it was also proposed that a 3-year average would be used to project 1984-crop Virginia-type ELKs rather than the customary 5-year average used for such estimates. Also, CCC indicated its intention to propose changing program regulations to allow for a uniform excess moisture level (the level above which moisture is deducted from gross weight). Aside from the changes indicated in the March 1, 1984 notice, no other changes from past pricing practices were proposed.

Nine commenters responded to the March 1 notice. They were: two individual producers, two peanut sheller/handlers, four grower organizations, and one Member of Congress. Many of the commenters made more than one suggestion for changes for the 1984 crop adjustments which applied to the 1983 crop.

In addition to commenting on the changes from past practice indicated in the March 1 notice, one commenter suggested that the basic differentials be changed to make the base value percentage of sound mature kernels (SMK) uniform for all peanut types; i.e., uniform for Virginia, Runner, Spanish and Valencia-type peanuts. Under the differentials which applied to the 1983 crop and all preceding crops since 1976, the base SMK value per percentage for Virginia-type peanuts has been 2 percent higher than the base SMK value per percentage for Runner-type peanuts. For Spanish-type peanuts, the base SMK value per percentage has been ½ percent higher than the Runner base SMK value per percentage. The Valencia base SMK value per percentage has not been established as a proportion of any other base SMK value. However, peanut differentials have traditionally been established in such a manner that the average Valencia support per ton has been tied to either the average level of support per ton for Virginia-type peanuts or Spanish-type peanuts depending on the quality and location of the Valencia-type peanuts.

Four commenters supported a uniform excess moisture level of 7 percent for all peanut types and areas. The current regulations governing the peanut price support program, which are found at 7 CFR Part 1446 and 7 CFR Part 729, provide for a deduction for excess moisture for peanuts in the traditional peanut growing States of the Southwestern and Southeastern areas when the moisture level exceeds 7 percent of gross weight and for a deduction at an 8 percent level elsewhere. The Southwestern and Southeastern areas comprise two of the three marketing areas provided for by regulation. The third area is the Virginia-Carolina area. The geographical coverage of the three areas is described in 7 CFR 1446.60. One commenter recommended a uniform level for excess moisture of 8 percent in all peanut producing areas. One commenter suggested that the excess moisture levels remain as they were for the 1983 crop.

Two commenters indicated that the premium for ELKs for Virginia-type peanuts should remain at the present 45 cents for each percentage of ELKs. Seven commenters agreed with the proposal to lower the ELK premium to 35 cents per percentage.

Seven commenters agreed with the proposal that the expected occurrence of ELKs in the 1984 crop of Virginia-type peanuts should be based on the average of Virginia-type ELKs in the past 3 marketing seasons rather than on a 5-year average. One commenter stated that there is no basis for reducing the number of years used in the average and that it should remain at 5 years.

Five commenters supported adoption in full of the proposed determination as published in the **Federal Register** because, in their view, the proposed changes in the differentials are needed to make Virginia-type peanuts competitive in the market. One commenter suggested that the proposed changes in the 1984-crop differentials remain unchanged from those which applied to the 1983 crop.

It has been determined that the 1984-crop differentials will be adopted as proposed. Those changes from past practices are: (1) A reduction in the price support premium for ELKs from 45 cents to 35 cents per percentage of ELKs in a ton of farmers stock Virginia-type peanuts, and (2) the use of a 3-year average to project the expected percentages of ELKs in a ton of Virginia-type peanuts for the 1984 crop. Further, as indicated in the March 1 notice, CCC currently intends to amend the regulations at 7 CFR Parts 729 and 1446 in a separate rulemaking procedure to make the deduction for excess moisture uniform for peanuts in all areas at a level of 7 percent. In the interim, however, the price support differentials contained in this notice were calculated on an assumed uniform 7 percent excess moisture level.

The determination to reduce the price support premium for Virginia-type ELKs to 35 cents per percentage of ELKs in a ton of peanuts responds to suggestions to the Department that the differentials operate to the disadvantage of Virginia-type peanuts in competition for domestic edible markets. There has not been a surplus of Virginia-type peanuts in recent years, but such peanuts have had a declining share of the domestic edible use market. The ELK premium was reduced from 45 cents to ensure that CCC does not provide an excessive level of price support for the Virginia-type peanut, thereby further reducing its competitive position. A reduction in the ELK premium to 35 cents will effectively, although modestly, reduce the net support price of an average ton of Virginia-type peanuts, in comparison with other peanut types. Likewise, the adoption of uniform moisture levels would have a similar effect since the higher 8 percent level applies principally to the Virginia-type peanuts, the primary peanut type in the Virginia-Carolina area. The reduction in the ELK premium not only avoids providing an excessive level of price support for the Virginia-type peanut but also compensates for the effect on the market value of ELKs as the result of increased supplies of ELKs in recent crop years. Because greater changes, such as a reduction in the ELK premium below 35 cents, could create a market advantage for Virginia-type peanuts, and could be disruptive, no other adjustment in the price support levels are being considered at this time based on the available data.

The determination to use a 3-year average for estimating 1984-crop Virginia-type ELKs is based on statistical data that shows an increase in the percent of ELKs in Virginia-type peanuts above 5-year trend levels. This is apparently due, at least in part, to the increased plantings within the last 2 years of new varieties of Virginia-type peanuts which tend to produce greater quantities of ELKs. In light of ELK performance in the two years preceding the 1984-crop, it has been determined that a 3-year average results in the most reliable prediction of 1984-crop occurrence of this quality factor.

As indicated, CCC intends to propose a uniform moisture level. Survey data indicates that moisture tends to be essentially uniform among peanut types and, as indicated, moisture levels can effect price relationships between peanut types. Based on these considerations, CCC intends to propose uniformity at the 7 percent level. This level would have the least disruptive effect on the market in terms of the amount of peanuts involved. In light of the intent to propose a change in the moisture levels, the differentials have been calculated on the assumption of a uniform 7 percent level. This assumption affects the expected net weight composition of the national crop, and thus slightly affects the calculation of the differentials due to the averaging requirements of Section 403 of the 1949 Act. Comments received on moisture in response to the proposed notice with respect to differentials will be considered together with any comments received on the proposal to change moisture levels.

Except as indicated, the 1984-crop differentials have been calculated in the same method as the 1983-crop differentials, and employ the same premiums and discounts. As with the 1983 crop, the value of additional peanuts for price support purposes will, in effect, be calculated by using a two-step process. The first step is to calculate the level at which the peanuts would be supported if the particular peanuts involved were quota peanuts. That figure is then reduced by a factor that represents the ratio of the national average support level for additional peanuts for the 1984-crop ($185/ton) to the national average support level for quota peanuts for the 1984-crop ($550/ton). That factor for the 1984 crop year is .3364, the same as for the 1983 crop year.

Determination

Accordingly, the following support prices and applicable adjustments are set forth with respect to the 1984 crop of peanuts.

(a) *Average 1984 Support Values for Quota Peanuts by Type Per Average Grade Ton of Peanuts.*

	Per average grade ton
(1) *Support Value for Warehouse-Stored Peanuts:*	
Type:	
Virginia	$537.30
Runner	555.19
Spanish	532.57
Valencia:	
Southwest area—suitable for cleaning and roasting	537.30
Southwest area—not suitable for cleaning and roasting	532.57
Areas other than Southwest	532.57
(2) *Support Value for Farm-Stored Peanuts:*	
Type:	
Virginia	537
Runner	555
Spanish	533
Valencia:	
Southwest Area	537
Areas Other Than Southwest	533

(b) *Calculation of Support Prices for Quota Peanuts by Type and Quality.*

The support price per ton for 1984-crop quota peanuts of a particular type and quality shall be calculated on the basis of the following rates, premiums, and discounts (with no value assigned to damaged kernels), except that the minimum support value for any quota lot of eligible peanuts of any type shall be 8 cents per pound of kernels in the lot:

(1) *Kernel value per ton excluding loose shelled kernels.*

(i) The price per ton for each percent of sound mature and sound split kernels shall be:

	Per percent
Type:	
Virginia	$7.979
Runner	7.823
Spanish	7.862
Valencia:	
Southwest area—suitable for cleaning and roasting	8.064
Southwest area—most suitable for cleaning and roasting	7.862
Areas other than Southwest	7.862

(ii) The price per ton for each percent of other kernels shall be: All types, per percent, $1.40.

(iii) The premium per ton for each percent of Extra Large Kernels (ELKs) for Virginia-type peanuts shall be $0.35. However, no premium for ELKs shall be applicable to any ton of such peanuts containing more than 4-percent damaged kernels.

(2) *Price of Loose Shelled Kernels Per Pound.* The price for each pound of loose shelled kernels shall be: All types, per pound, $0.07.

(3) *Foreign Material Discount.* For all types of peanuts, the discount per ton for foreign material shall be as follows:

	Discount
Percent:	
0 to 4	$0
5	1.00
6	2.00
7	3.00
8	4.00
9	5.00
10	6.00
11	7.00
12	8.50
13	10.00
14	11.50
15	13.00
16 and over	(1)

[1] For each full percent in excess of 15 percent, deduct an additional $2.

(4) *Sound Split Kernel Discount.* For all types of peanuts, the discount per ton for sound split kernels shall be as follows:

	Discount
Percent:	
1 through 4	$0
5	1.00
6	1.60
7 and over	(1)

[1] For each full percent in excess of 6 percent deduct an additional $0.80.

(5) *Damaged Kernel Discount.*

(i) For all types of peanuts, the discount per ton for damaged kernels shall be as follows:

	Discount
Percent:	
1	$0
2	3.40
3	7.00
4	11.00
5	25.00
6	40.00
7	60.00
8 to 9	80.00
10 and over	100.00

(ii) Notwithstanding the above discount schedule, the damaged kernel discount for Segregation 2 peanuts transferred from additional to quota loan pools shall not exceed $25 per ton.

(6) *Adjustment for peanuts sampled with other than a pneumatic sampler.* The support price per ton for Virginia-type peanuts sampled with other than a pneumatic sampler shall be reduced by $0.10 per every percentage point of sound mature and sound split kernels.

(7) *Mixed type discount.* Individual lots of farmers stock peanuts containing mixtures of two or more types in which there is less than 90 percent of any one type will be supported at a rate which is $10 per ton less than the support rate available to the type in the mixture having the lowest support rate.

(8) *Adjustments for location Where Peanuts are not Customarily Shelled or Crushed.*

(i) Farmers stock peanuts on which price support is made available in the

States specified below shall be discounted as follows:

State	Per ton
Arizona	$25
Arkansas	10
California	33
Louisiana	7
Mississippi	10
Missouri	10
Tennessee	25

(ii) Farmers stock peanuts on which price support is made available in Puerto Rico and all other States, territories and possessions of the United States (excluding the States specified in paragraph (8)(i) and Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia) shall be discounted at $40.00 per ton.

(9) *Virginia-Type Peanuts.* Virginia-type peanuts, in order to be eligible for peanut price support as Virginia-type, must contain 40 percent or more "fancy" size peanuts, as determined by a presizer with the rollers set at $^{34}/_{64}$ inch space. Virginia-type peanuts so determined to contain less than 40 percent "fancy" size peanuts will be supported (but not classed) as though they were Runner-type.

(10) *Discount for Aspergillus Flavus Mold (Segregation 3 Peanuts).* There will be no discount applied to Segregation 3 peanuts for Aspergillus flavus mold when such peanuts are placed under loan at the additional loan rate. Should such peanuts later be transferred to a quota loan pool under 7 CFR 1446.66, they will be discounted at the rate of $25 per net ton from the quota price support rates.

(c) *Calculation of Support Values for Additional Peanuts.* The support price per ton for 1984-crop additional peanuts of a particular type and quality shall be calculated on the basis of 33.64 percent of the same rates, premiums, and discounts as are applicable to quota peanuts. This percentage has been computed by dividing the national average support rate per ton for 1984-crop additional peanuts by the national average support rate per ton for 1984-crop quota peanuts.

Signed at Washington, D.C. on June 1, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-15188 Filed 6-5-84; 8:45 am]

BILLING CODE 3410-01-M

Science and Education Administration

Human Nutrition Board of Scientific Counselors; Board Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of the Secretary cancels the following meeting:

Name: Human Nutrition Board of Scientific Couselors.

Date: June 14-15, 1984.

Time and place: June 14, 1984, 1:00-5:00 p.m.; June 15, 1984, 8:30 a.m.-3:00 p.m.; Room 3109 South Building, United States Department of Agriculture, Independence Avenue, between 12th and 14th Streets, S.W., Washington, D.C.

Rescheduling will be announced at a later date.

Done at Washington, D.C., this 31st day of May 1984.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 84-15199 Filed 6-5-84; 8:45 am]

BILLING CODE 3410-01-M

CIVIL RIGHTS COMMISSION

Georgia Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 6:30 p.m., on June 28, 1984, at the Holiday Inn Downtown, International Room, Piedmont Avenue and International Boulevard, Atlanta, Georgia 30303. The purpose of the meeting is to plan for a Regional State Advisory Committee conference along with a briefing session for the fact-finding meeting on women and minorities in the media.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-15125 Filed 6-5-84; 8:45 am]

BILLING CODE 6335-01-M

Wyoming Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 1:30 p.m., on June 23, 1984, at the Knight Hall, Meeting Room 314, University of Wyoming, Laramie, Wyoming 82070. The purpose of the meeting is to discuss the Grove City case on Title IX, the rules and regulations surrounding Title IX, possible research in Wyoming on Title IX, and possible research projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Rocky Mountain Regional Office at (303) 844-2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-15126 Filed 6-5-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 34).

Agency: International Trade Administration

Title: Annual Report from Foreign-Trade Zones

Form numbers: Agency—ITA-359P; OMB—0625-0109

Type of request: Extension of the expiration date of a currently approved collection

Burden: 60 respondents; 3,212 reporting hours

Needs and uses: The Foreign Trade Zone Act requires that grantees of foreign-trade zones submit a full report on their operations annually. An Annual Report to Congress by the Foreign Trade Zones Board is also required by the Act. This collection provides the basis for the Annual Report to Congress.

Affected public: States or local governments; businesses or other for profit institutions; non-profit institutions; small businesses or organizations

Frequency: Annually

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Ken Allen, 395–3785
Agency: International Trade Administration
Title: New Product Information Service/ International Market Search
Form numbers: Agency—ITA–4063P and ITA–4091P; OMB—0625–0061
Type of request: Revision of a currently approved collection
Burden: 2100 respondents; 875 reporting hours
Needs and uses: This information collection allows ITA to promote in overseas markets U.S. products available for export. The product information reaches the U.S. embassies and consulates in printed camera-ready form through the Commerce magazine Commercial News USA, which is published monthly and is designed to be source material for post new letters and a counselling tool for commercial officers.
Affected public: Businesses or other-for-profit institutions; small businesses or organizations.
Frequency: On Occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Ken Allen, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Ken Allen, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84–15106 Filed 6–5–84; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[C–461–401]

Potassium Chloride From the Soviet Union; Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We are rescinding our notice initiating a countervailing duty investigation of potassium chloride imported from the Soviet Union, published on April 26, 1984, and we are dismissing the petition upon which the investigation was based. We have determined, subsequent to initiating this investigation, that bounties or grants, within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), cannot be found in nonmarket economies. Because the Soviet Union is a nonmarket economy, it is apparent that the petition does not allege the elements necessary for imposition of countervailing duties.

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377–0187.

SUPPLEMENTARY INFORMATION: On March 30, 1984, we received a petition from counsel for AMAX Chemical, Inc., and Kerr-McGee Chemical Corporation filed on behalf of the U.S. industry producing potassium chloride, alleging that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to the manufacturers, producers, or exporters of potassium chloride in the Soviet Union. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation. We announced initiation of this investigation on April 18, 1984. In our Notice of Initiation (49 FR 18002), we stated that an issue identical to one raised in this petition (*i.e.*, whether bounties or grants within the meaning of the countervailing duty law could exist in nonmarket economies) was being analyzed in our proceedings involving carbon steel wire rod imports from Czechoslovakia and Poland. We stated that final determinations in those cases would be made by May 1, 1984, and further stated that our initiation of this investigation did not imply any judgment as to whether the practices alleged in fact constituted bounties or grants within the meaning of the countervailing duty law.

Subsequent to publication of our initiation notice, we determined in *Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination* (49 FR 19374) that, as a matter of law, bounties or grants within the meaning of section 303 of the Act cannot be found in nonmarket economies (NME's) and, accordingly, that countervailing duties cannot be assessed against imports from NME's.

In our opinion, the economy of a country is an NME whenever it operates on principles of nonmarket cost or pricing structures so that sales or offers for sale of merchandise in that country or to other contries do not reflect the market value of the merchandise. We have found this to be the case in the Soviet Union economy: prices are centrally administered; resource allocation is centrally directed; and the Soviet Union's currency, the Ruble, exhibits extremely limited convertibility. Therefore, we determine that the economy of the Soviet Union is an NME.

In light of our determination in *Carbon Steel Wire Rod from Poland*, that, as a matter of law, bounties or grants cannot be found in NME's, it is apparent that the petition filed against imports of potassium choloride from the Soviet Union (an NME) does not allege elements necessary for the imposition of countervailing duties. The petition is, therefore, not a sufficient basis for an investigation. Accordingly, we are rescinding our notice announcing a countervailing duty investigation of potassium chloride from the Soviet Union and dismissing the petition with respect to this merchandise.

Dated: May 31, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–15155 Filed 6–5–84; 8:45 am]

BILLING CODE 3510–DS–M

[C–429–401]

Potassium Chloride From the German Democratic Republic; Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We are rescinding our notice initiating a countervailing duty investigation of potassium chloride imported from the German Democratic Republic (GDR), published on April 26, 1984, and we are dismissing the petition upon which the investigation was based. We have determined, subsequent to initiating this investigation, that bounties or grants, within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), cannot be found in nonmarket economies. Because the GDR is a nonmarket economy, it is apparent that the petition does not allege the elements necessary for imposition of countervailing duties.

EFFECTIVE DATE: June 5, 1984.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377–0187.

SUPPLEMENTARY INFORMATION: On March 30, 1984, we received a petition from counsel for AMAX Chemical, Inc., and Kerr-McGee Chemical Corporation filed on behalf of the U.S. industry producing potassium chloride, alleging that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to the manufacturers, producers, or exporters of potassium chloride in the GDR. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation. We announced initiation of this investigation on April 18, 1984. In our Notice of Initiation (49 FR 18000), we stated that an issue identical to one raised in this petition (*i.e.*, whether bounties or grants within the meaning of the countervailing duty law could exist in nonmarket economies) was being analyzed in our proceedings involving carbon steel wire rod imports from Czechoslovakia and Poland. We stated that final determinations in those cases would be made by May 1, 1984, and further stated that our initiation of this investigation did not imply any judgment as to whether the practices alleged in fact constituted bounties or grants within the meaning of the countervailing duty law.

Subsequent to publication of our initiation notice, we determined in *Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination* (49 FR 19374) that, as a matter of law, bounties or grants within the meaning of section 303 of the Act cannot be found in nonmarket economies (NME's) and, accordingly, that countervailing duties cannot be assessed against imports from NME's.

In our opinion, the economy of a country is an NME whenever it operates on principles of nonmarket cost or pricing structures so that sales or offers for sale of merchandise in that country or to other countries do not reflect the market value of the merchandise. We have found this to be the case in the GDR economy: prices are centrally administered; resource allocation is centrally directed; and the GDR currency, the Mark, exhibits extremely limited convertibility. Therefore, we determine that the economy of the GDR it is an NME.

In light of our determination in *Carbon Steel Wire Rod from Poland*, that, as a matter of law, bounties or grants cannot be found in NME's, it is apparent that the petition filed against imports of potassium chloride from the GDR (an NME) does not allege elements necessary for the imposition of countervailing duties. The petition is, therefore, not a sufficient basis for an investigation. Accordingly, we are rescinding our notice announcing a countervailing duty investigation of potassium chloride from the GDR and dismissing the petition with respect to this merchandise.

Dated: May 31, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–15154 Filed 6–5–84; 8:45 am]

BILLING CODE 3510–DS–M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 84–77. Applicant: University of California, Davis, CA 95616. Instrument: Image Analyzing System, Model Quantimet 900. Manufacturer: Cambridge Instruments, Ltd., United Kingdom. Intended use: See notice at 49 FR 8055.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a slow (1/10 sec) non-interlaced scan each containing over 600 000 picture points (pixels). The National Institutes of Health advises in its memorandum dated April 23, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–15153 Filed 6–5–84; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in TSUSA Numbers for Certain Man-Made Fiber Apparel From the Republic of Korea

June 1, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 7, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

On December 16, 1983 a notice was published in the **Federal Register** (48 FR 55894) which announced establishment of restraint limits of certain cotton, wool and man-made fiber textile products, including Category 640 (woven shirts of man-made fibers), produced or manufactured in the Republic of Korea and exported during 1984. Changes in the Tariff Schedules of the United States Annotated (TSUSA), which were effective on April 1, 1984, changed the TSUSA numbers included in Category 640, as follows:

Category 640–D (Dress Shirts), Only TSUSA numbers 379.3130, 379.3342, 379.9535, 379.9540, and 379.9660.

Category 640–O (Other than Dress Shirts), All other TSUSA numbers in the category except those listed for Category 640–D.

A description of the textile categories in terms of T.S.U.S.A numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

June 1, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 13, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during 1984.

Effective on June 7, 1984, footnote 2 of the directive of December 13, 1983 is amended to read as follows:

[2] In Category 640, only TSUSA numbers, 379.3130, 379.3342, 379.9535, 379.9540 and 379.9660.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-15107 Filed 6-5-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Forms used to obtain personal data from a U.S. citizen being considered for a DoD CONFIDENTIAL/SECRET Personnel security clearance, or a OSE determination at the CONFIDENTIAL/SECRET level; and to obtain current/updated personal data to process a clearance action when an individual with a security clearance is transferring employment from one contractor to another within a 12-month period and requires a security clearance in new employment. Also used in converting a User Agency Clearance to an Industrial Security Clearance.

Number of respondents: DD-48—108,000; DD-48-3—60,000

Number of responses per respondent—1

Number of hours per response: DD-48—40 minutes; DD-48-3—10 minutes

Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, DC 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS, HQ Administrative Service Division, 1900 Half Street, SW, Washington, DC 20324, telephone (202) 693-0881.

June 1, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 15122 Filed 6-5-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board

Ad Hoc Committee on the Assessement of Hazardous Materials and Toxic Wastes Management Issues

May 23, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on the Assessment of Hazardous Materials and Toxic Wastes Management Issues will meet July 2-3, 1984 at the Pentagon, Room 5D1014. The meeting will begin at 8:30 a.m. and end at 4 p.m. on July 2, 8 a.m. to 12 p.m. on July 3.

The meeting will be open to the public.

The purpose of the meeting will be to review management and engineering and scientific matters relating to the Assessment of Hazardous Materials and Toxic Wastes Management Issues.

For further information, contact the Scientific Advisory Board Secretariat at 202/697-8404.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-15115 Filed 6-5-84; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Ad Hoc Committee on the Assessment of Hazardous Materials and Toxic Wastes Management Issues

May 23, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on the Assessment of Hazardous Materials and Toxic Wastes Management Issues will meet July 23-25, 1984 at the Pentagon, Room 5D1014. The meeting will begin at 8:00 a.m. and end at 5 p.m. each day.

The meeting will be open to the public.

The purpose of the meeting will be to review management and engineering and scientific matters relating to the Assessment of Hazardous Materials and Toxic Wastes Management Issues.

For further information, contact the Scientific Advisory Board Secretariat at 202/697-8404.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-15116 Filed 6-5-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the use to be made of the information collected;. (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Government-Industry Data Exchange Program (GIDEP) Alert Form—DD-1938.

The Failure Experience Data Interchange function of GIDEP provides objective failure information generated when significant problems are identified or parts, components, materials, and manufacturing processes. This data includes the ALERT system. The ALERT form DD 1938 is used to record the failure information. Private industry and

Government agencies submit and use data.

Businesses or other profit, 350, 1050.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DOD Clearance Office, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy oif the information collection proposal may be obtained from Captain B. A. Butcher, Naval Material Command (Code MAT–06B), Washington, D.C. 20360, telephone (202) 692–1106.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–15123 Filed 6–5–84; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6864–001]

City of Buffalo; Surrender of Preliminary Permit

May 31, 1984.

Take notice that the City of Buffalo, Permittee for the Buffalo Water Power Project No. 6864, has requested that its preliminary permit be terminated. The permit was issued on August 5, 1983, and would have expired on January 31, 1985. The project would have been located on Clear Creek in Johnson County, Wyoming.

The Permittee filed its request on March 28, 1984, and the surrender of the preliminary permit for Project No. 6864 is deemed accepted 30 days from the date of issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–15067 Filed 6–5–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6826–001]

City of Donaldsonville; Surrender of Preliminary Permit

May 31, 1984.

Take notice that the City of Donaldsonville, Permittee for the proposed Bayou Lafourche Hydroelectric Project No. 6826, has requested that its preliminary permit be terminated. The permit was issued on March 10, 1983, and would have expired August 31, 1984. The project would have been located on the Mississippi River and Bayou Lafourche in the City of Donaldsonville, Ascension Parish, Louisiana.

The Permittee filed its request on April 18, 1984, and the surrender of the preliminary permit for Project No. 6826 is deemed accepted 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–15070 Filed 6–5–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4951–004]

The City and County of San Francisco; Surrender of Preliminary Permit

May 31, 1984.

Take notice that The City and County of San Francisco, Permittee for the South Fork Tuolumne Water Power Project, FERC No. 4951, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 4951 was issued on February 26, 1982, and would have expired on January 31, 1985. The project would have been located on Middle Fork and South Fork Tuolumne River in Tuolumne County, California.

The City and County of San Francisco filed the request on April 16, 1984, and the surrender of the preliminary permit for Project No. 4951 is deemed accepted as of April 16, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–15071 Filed 6–5–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5708–001]

Seaward Development-Chase Island, Inc.; Surrender of Preliminary Permit

May 31, 1984.

Take notice that Seaward Development-Chase Island, Inc., Permittee for the Chase Island Project, No. 5708 located on the Connecticut River in Windsor County, Vermont and Sullivan County, New Hampshire, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 9, 1982, and would have expired on July 31, 1985. The Permittee states that analysis of the Chase Island Project indicated that there may be significant impacts with the sitings of the spillway and powerhouse as proposed.

Seaward Development-Chase Island, Inc.'s request was filed April 23, 1984. The surrender of the permit for Project No. 5708 is accepted as of April 23, 1984, and is effective 30 days after the issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–15069 Filed 6–5–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3049–002]

Windsor Locks Canal Co., Massachusetts Municipal Wholesale Electric Co. and Connecticut Municipal Electric Energy Cooperative; Surrender of Preliminary Permit

May 31, 1984.

Take notice that Windsor Locks Canal Company, Massachusetts Municipal Wholesale Electric Company and Connecticut Municipal Electric Energy Cooperative, Permittee for the proposed Windsor Locks Project No. 3049, have requested that their preliminary permit be terminated. The preliminary permit was issued on July 28, 1981, and would have expired on June 30, 1984. The proposed project would have been located on the Connecticut River in the Town of Windsor Locks, Hartford County, Connecticut.

The Permittee filed its request on April 26, 1984, and the surrender of the permit for Project No. 3049 will be deemed effective 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–15068 Filed 6–5–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP68–179–001, RP84–83–000, and TC84–5–000]

Florida Gas Transmission Co.; Tariff Filing

June 1, 1984.

Take notice that on May 25, 1984, Florida Gas Transmission Company (FGT) tendered for filing in Docket Nos. CP68–179–001, RP84–83–000 and TC84–5–000 pursuant to Part 154 of the Commission's Regulations (18 CFR 154) First Revised Volume No. 1 to its tariff, Original Sheet Nos. 1 through 78, all as more fully set forth in the Revised Volume which is on file with the Commission and open to public inspection.

FGT states that said sheets are filed pursuant to the Commission's September 23, 1983 order in Docket No. CP68–179–001, which, *inter alia*, approved a stipulation and agreement which eliminated restrictions on growth in priorities 1–4 of FGT's currently effective curtailment plan; imposed new

restrictions in priorities 5–9; and established a "triggering mechanism" to halt growth in certain situations. In revising its tariff in light of the Commission's September 23, 1983 order and the desirability of updating various other parts of the tariff, FGT concluded that it would be administratively easier and less cumbersome to file a First Revised Volume No. 1 to its tariff, which would supercede in its entirety Original Volume No. 1, which is currently on file with the Commission.

FGT's description of the proposed changes follows:

I. Rate Schedule G

(1) A statement recognizing that delivery is subject to the possible reimposition of volumetric entitlements pursuant to the stipulation and agreement approved by the Commission's September 23, 1983 order was added to paragraph 2.

(2) The minimum bill provision was modified so that the minimum bill quantity is set forth in Section 16 of the General Terms and Conditions and is based upon one-tenth of a customer's previous Rate Schedule G peak day times 365, instead of 50 percent of Rate Schedule G as set forth in the existing tariff.

(3) The term annual contract quantity was redefined to reflect the volumetric entitlements settlement and to recognize that some lower priority requirements (i.e. priorities 5–9) may be served under the G Rate Schedule.

(4) A new paragraph (11) was added which requires FGT's customers to inform FGT of their priority 5–9 customers and any changes therein or in such customer's requirements.

(5) Miscellaneous.

(a) Paragraphs 9 and 10, hourly deliveries and measurement base, respectively, were moved to Section 20 of the General Terms and Conditions section of the tariff.

(b) Paragraph 9 of the existing tariff (large volume industrial consumers) was deleted in its entirety.

II. Rate Schedule I

(1) The annual contract quantity provision was revised to reflect the limitations imposed on service in priorities 5–9 by the volumetric entitlement settlement.

(2) Buyer is required to advise FGT of its customers served under the I Rate Schedule and the volume of gas sold to each end user in priorities 5–9.

(3) The curtailment notice provision was modified.

III. General Terms and Conditions

(1) A definition of "Service Year" was added.

(2) The definition of "BTU" was expanded.

(3) The definition of "orifice meter" was modified to comport more fully with recent technological advances.

(4) The definition of "total heating value" was modified by adding a "rounding" provision (to the "nearest whole BTU") and an estimating provision in the event a calorimeter is not working properly.

(5) Modified "Correction of Meter Errors" to provide for a tolerance of 0.5 percent instead of the current 2.0 percent for gravitometers and calorimeters.

(6) Added and/or updated the provisions relating to the use of turbine and orifice meters.

(7) Force Majeure—Added the requirement that a party claiming the occurrence of a force majeure condition give FGT notice in writing as soon as possible after the occurrence of the claimed force majeure condition.

(8) Priorities of Service.

(a) provides that a customer's requirements for allocation purposes, would not exceed such customers annual contract quantities under Rate Schedules G and

I. This limits a customer to its actual Priority 1–4 deliveries plus its 5–9 deliveries as limited by its priority 5–9 volumertic entitlement.

(b) A requirement was added that requests for emergency exemption from curtailment are to be confirmed in writing within five (5) working days of the request.

(c) Streamlined Section 9.7 to conform to the Commission's final essential agricultural rule as codified at 18 CFR 281.201, *et seq.*

(d) Modified the Index of Entitlements to show essential agricultural requirements; each customer's combined and grouped volumetric entitlement as of September 22, 1983; and each customer's combined and grouped priority 5–9 entitlement calculated purusant to the volumetric entitlements settlement.

(9) Procedures for increasing contract quantities was moved from Section 13.2 of the General Terms and Conditions to Section 14 and reflects FGT's policy thereon.

(10) The procedure for new or additional service reflects FGT's policy that it would not pay for or contribute to the cost of lateral lines, metering and other facilities appurtenant thereto for either new customers or additional service to existing customers.[1]

(11) Certain minor changes in nomenclature were made to Section 15, *Purchase Gas Adjustment* and *Incremental Pricing Provision:*, so as to conform with the Commission's Regulations.

(12) A new Section 16 was added which establishes a new annual minimum quantity for each customer based upon one-tenth of a customer's previous Rate Schedule G peak day times 365.

New provisions were added to Section 16 to implement the volumetric entitlement settlement.

(13) The overrun provision was modified to provide for the imposition of a penalty in the event a customer overruns, among other things, his priority 5–9 volumetric entitlement by greater than 5 percent of his 9–22–83 annual volumetric entitlement as it existed immediately prior to the Commission's approval of the volumetric entitlements settlement.

(14) Determination of Deliveries—imposes a requirement on buyer to measure the quantities of "I" gas sold and furnish such information to seller by the fifth of each month.

(15) Define maximum daily and hourly quantities.

(16) Eliminated Section 20 of the General Terms and Conditions, Louisiana First Use Tax Provision, in the existing tariff since there no longer is such a tax. Section 20 of the existing tariff (Louisiana First Use Tax) was replaced by a new Section 20 entitled Maximum Hourly and Daily Volumes.

(17) Service Agreements.

(a) Rate Schedules G and I

(i) Annual Contract Quantity—is defined as the actual quantity delivered in a contract year; provided that G deliveries that may be classified in priorities 5–9 plus I gas deliveries in priorities 5–9 may not exceed each customer's 5–9 volumetric entitlement as set forth in Section 9 of the General Terms and Conditions.

In the event volumetric entitlements are reimposed pursuant to the stipulation and settlement agreement, this provision would limit deliveries to the greater of the volumetric entitlements in effect immediately prior

[1] It is submitted that the proper interpretation of the language of Section 14, General Terms and Conditions, is at issue in *Consolidated Gas Company of Florida* v. *FGT*, Docket No. CP82–342–000. FGT states that is has been FGT's position in that proceeding that the current language in FGT's tariff requires a new customer to pay all facility costs associated with that service. FGT states that the instant filing is consistent with that position.

to the Commission's September 23, 1983 order or a customer's requirements immediately prior to the reimposition of volumetric entitlements.

(ii) *Term*—the term is extended to July 1, 1999 and the following language is added "[it] is understood that Seller does not now have and may not have in the future sufficient gas reserves to supply Buyer with gas for the term of Service Agreement and that, consequently, Seller will not be responsible for a failure to have gas available for delivery hereunder."

FGT states that copies of the filing were served on FGT's jurisdictional customers and the Florida Public Service Commission, and all parties in the instant docket.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before June 19, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15184 Filed 6-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-136-000]

Kansas Gas and Electric Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, Denying Motion To Reject, Denying Waiver of Notice Requirements, Granting Waiver of Filing Requirements, Ordering Refunds, and Establishing Procedures

Issued: June 1, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

On December 5, 1983, as completed on April 4, 1984,[1] Kansas Gas and Electric Company (KG&E) submitted for filing proposed changes in its rates for partial requirements firm power service to the Cities of Chanute, Fredonia, and Iola, Kansas (Cities).[2] KG&E states that its submittal reflects a rate increase which was awarded by a panel of the American Arbitration Association (AAA) on November 9, 1983, in accordance with provisions of the parties' applicable service schedules.[3] KG&E requests waiver of the notice requirements in order to permit the rates to become effective on November 9, 1983, the date of the AAA award. KG&E also requests waiver of the Commission's requirement that cost support be provided for the proposed changes, stating that it provided such cost support to the AAA panel and that the filing incorporates the AAA award into the appropriate service schedules.

Background

Section 4 of Service Schedule A of KG&E's contracts with Cities, entitled "Term," provides a mechanism for rate changes whereby rate revisions shall be negotiated between the parties but, if the parties cannot agree, the dispute is then to be submitted to binding arbitration. KG&E notes that the Commission, in an order issued on February 1, 1978, interpreted the Service Schedule as providing for rate revisions only after a negotiated agreement or after the matter has been submitted to binding arbitration. *See KG&E,* Docket No. ER77-578-000, 2 FERC ¶ 61,095. Service Schedule A also provides that neither party may request rate revisions more often than once every five years.

KG&E states that on July 14, 1980, five years after its last successful revision of Service Schedule A, it wrote to each City requesting an increase. Subsequently, settlement negotiations were unsuccessful and the matter was submitted to binding arbitration in accordance with the service schedules. KG&E contends that it is, therefore, unnecessary that Cities agree in this docket to the proposed service schedule amendments, because the findings of the AAA are binding on all parties.

Notice of KG&E's filing was published in the **Federal Register** with comments due on or before December 28, 1983. On December 28, 1983, as supplemented on January 17, 1984, Cities filed a motion to intervene and motion to reject KG&E's filing or, alternatively, a request for a five month suspension. Cities also oppose KG&E's requests for waiver of the notice and filing requirements. In support of their requests, Cities claim that KG&E's filing is inconsistent with the arbitration award in that KG&E has attempted to impose a minimum billing demand clause (a 100% demand ratchet) which the arbitration panel did not approve and, as a result, has violated Cities' contract rights by filing a rate that will produce revenues higher than those approved by the AAA. Cities also allege that KG&E failed to submit necessary cost of service data and testimony in accordance with the Commission's filing requirements. Finally, Cities allege that the proposed rates will create a price squeeze.

On January 16, 1984, KG&E filed an answer opposing Cities' requests for relief. On January 23, 1984, KG&E filed a supplement to its answer in which it reiterates that the proposed rates are consistent with the AAA award and that the request for waiver of the notice requirements is justified since the effective date coincides with the date of the award.

In its April 4, 1984 response to the earlier deficiency letter (see footnote 1, *supra*), KG&E contends that its present contract provides for a ratchet, citing language in the original agreements on file with the Commission. KG&E states that it had billed under the ratchet until January 2, 1981, when the Commission accepted KG&E's compliance filing applicable to other customers in Docket No. ER77-578-000 (14 FERC ¶ 61,006). Although the Commission rejected KG&E's proposed increase to Cities in that docket, KG&E states that it, in the apparent belief that it should conform all of its wholesale contracts to the Commission's findings therein,[4] erroneously eliminated the billing demand ratchet for the Cities as well. KG&E contends that the evidence which it presented in the arbitration proceeding clearly employed a ratchet and that a reference in the AAA award to the term *"Billing Demand"* was intended, therefore, to assume a demand ratchet. KG&E also requested that cost support for the twelve month test period

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[1] A deficiency letter was issued in this docket on February 3, 1984. That letter, *inter alia*, requested an explanation of the calculation of present billing demands and a demonstration that KG&E's proposed rate properly reflected a ruling discussed below of the American Arbitration Association with respect to billing demands. The letter also directed KG&E to provide evidence that the arbitration award permits a fuel adjustment clause and, in the event the company could make such a demonstration, to file its proposed FASGM-1180 fuel clause which it referenced in its proposed amendments but did not file.

[2] *See* Attachment for rate schedule designations.

[3] AAA Case Number 71-181-0442-82-B. The arbitration award provides as follows:

Section II Service Schedule A to each of the three contracts involved should be amended to provide as follows:

Eight Dollars and Twenty Cents ($8.20) per kw of Billing Demand, plus Six and Eighty-One One Hundredths (6.81) Mills per kwh for all energy delivered thereunder.

[4] In Opinion Nos. 80 and 80-B, issued on March 19, 1980 (10 FERC ¶ 61,243) and November 24, 1981 (17 FERC ¶ 61,180), respectively, the Commission rejected the use of a ratchet as to KG&E's other wholesale customers in Docket No. ER77-578-000.

ending June 30, 1984, previously filed in Docket No. ER83–628–000, be incorporated by reference in the instant proceeding.[5]

With respect to its fuel adjustment clause, KG&E provided no evidence that the AAA award permits a fuel adjustment clause, stating that it did not request the panel to award a change in its fuel clause. However, KG&E states that it has inadvertently been charging its generating municipal customers under its FASGM–1180 fuel clause since January 1981, and that, while the Commission has never accepted FASGM–1180 for filing, KG&E now requests that it be accepted for filing as part of the instant docket.

On April 19, 1984, Cities responded to KG&E's April 4 filing, claiming that the AAA award included no demand ratchet. Cities further request that KG&E's cost support be rejected, because the arbitration panel rejected data for the test year ending on June 30, 1984, as being inappropriate. Cities request that KG&E be required to use the same 1982 test period in this proceeding which it used before the AAA panel. Cities do not protest KG&E's use of the FASGM–1180 fuel clause, provided that KG&E can demonstrate that the present and proposed fuel adjustment clauses produce identical revenues.

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR § 385.214), The timely motion to intervene serves to make Cities parties to this proceeding.

As noted, the contracts between KG&E and Cities provide that, in the event the parties cannot agree on rate revisions, they will submit their dispute to *binding* arbitration.Therefore, while the Commission must perform its own independent review of the rates under the Federal Power Act, Cities are contractually bound to the arbitration award and, in our view, are precluded from arguing such matters as price squeeze. In this docket, we shall limit our review to whether KG&E's rates are cost justified and whether they properly reflect the AAA award.

The parties' contracts are silent with respect to the test year to be relied upon. Because we must conduct our own review of the proposed rates, the Commission is not bound to use the data submitted before or relied on by other entities such as the AAA panel. Instead, we believe that the more recent data from Docket No. ER83–628–000 are preferable to stale 1982 data which Cities claim were used in the AAA panel's determination. Consequently, we shall deny Cities' request to require KG&E to refile its cost support data to reflect the 1982 test period, and we shall allow KG&E to incorporate by reference its costs support for the test year ending June 30, 1984.

The plain language of the AAA award makes no reference to a fuel adjustment clause, and KG&E has offered no evidence to suggest that the award contemplates use of any fuel clause. However, it appears clear that the parties reasonably intend that some fuel clause is to continue in effect. In view of this and the fact that the AAA award is silent on this issue, we believe that it is appropriate to permit KG&E to apply its fuel clause on file (effective July 14, 1976, in Docket No. E–9485) for Cities, in the absence of a showing, as requested by Cities, that the FASGM–1180 fuel clause would produce equal revenues.

We also note that KG&E has acknowledged that it improperly billed Cities under its FASGM–1180 fuel clause, since January of 1981. Accordingly, we shall require KG&E to submit comparative billing data under its filed fuel clause and its FASGM–1180 fuel clause for all months from January 1981 to the present and, to the extent that revenues differ, to refund any overcharges to Cities, with interest.

With regard to the challenged ratchet provision, we are unable to discern with certainty either the intent of the parties or that of the AAA in promulgating its award. KG&E's filed rate schedules for service to the Cities currently incorporate a demand ratchet. However, from the pleadings it appears that the company has unilaterally declined to bill in accordance with the ratchet for a number of years. As can be seen from the brevity of the AAA award (*see* footnote 3, *supra*), no answer to this question is readily ascertainable from that document. While it appears reasonable to conclude that the AAA award assumes that all provisions of the pre-existing rate schedules, other than the unit charges specifically changed by the award, would remain intact (*i.e.*, the ratchet provision would survive), we believe that additional evidence will be necessary in order to resolve this controversy. We note, however, that this is a narrow inquiry and we do not expect litigation on extraneous topics.

In view of the factual questions outstanding, we conclude that KG&E's submittal has not been shown to be just and resonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the submittal for filing and suspend its operation as ordered below.

In *West Texas Utilities Co.*, Docket No. ER82–23–000, 18 FERC ¶ 61,189 (1982), we explained our suspension policy, noting that where preliminary review indicates that proposed rates may be unjust or unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a one day suspension. Our preliminary review of the instant filing and the pleadings indicates that the rates proposed by KG&E may not be excessive. However, as noted, the rates may exceed the level authorized by the AAA award. In order to provide refund protection, we shall therefore suspend KG&E's proposed rates for one day. Additionally, we note that both the rate change provision of the contract and the arbitration award are silent as to the effective date of the rate revision. Absent clear language to the contrary, KG&E is bound by the statutory notice requirements, and KG&E has not shown good cause for the Commission to waive the notice requirements in order to permit an effective date of November 9, 1983. Accordingly, we shall deny KG&E's request for waiver of notice. The proposed rates shall take effect, subject to refund, on June 5, 1984, sixty one days after the completion of KG&E's filing.

The Commission orders:

(A) Cities' motion to reject KG&E's rates is hereby denied.

(B) KG&E's request for waiver of the notice requirements is hereby denied.

(C) KG&E's request for waiver of the filing requirements, with regard to the 1984 test year data, is hereby granted.

(D) In the absence of a showing that revenues derived under the fuel clause currently on file for Cities and under the FASGM–1180 fuel clause are identical, KG&E shall within thirty (30) days of the date of this order, refile its amendments, deleting the reference to the FASGM–1180 fuel clause. Further KG&E is hereby directed to submit comparative billing data under its filed fuel clause and its FASGM–1180 fuel clause for all months from January 1981 to date and to refund with interest any revenues above those generated by the filed fuel adjustment clause within thirty (30) days of the date of this order. An appropriate refund report shall be filed within fifteen (15) days thereafter.

(E) KG&E's proposed rates are hereby accepted for filing, as modified by Paragraph (D) above, and suspended for

[5] KG&E notes that it included the firm service to Cities in its cost study for purposes of customer class consistency even though no increase was being proposed to Cities at that time.

one day, to become effective on June 5, 1984, subject to refund.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of KG&E's rates.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a pre-hearing conference in this proceeding to be held within approximately fifteen (15) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT

Kansas Gas and Electric Company, Docket No. ER84-136-000

Rate Schedule Designations

Filing Date: December 5, 1984.
Effective Date:

Designation	Other party	Description
(1) Supplement No. 9 to Rate Schedule FERC No. 87.	Fredonia	Amdt. No. 6.
(2) Supplement No. 9 to Rate Schedule FERC No. 89.	Iola	Do.
(3) Supplement No. 16 to Rate Schedule FERC No. 128.	Chanute	Do.

[FR Doc. 84-15185 Filed 6-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER84-379-000 and EL83-24-000]

Florida Power and Light Co.; Order Accepting for Filing and Suspending Rates in Part, Noting Interventions, Granting Requests for Summary Disposition in Part, Denying Motions for Rejection, Granting Waivers in Part, Consolidating Dockets, and Establishing Hearing and Price Squeeze Procedures

Issued June 1, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

On April 9, 1984, Florida Power and Light Company (FPL) tendered for filing [1] two unexecuted service agreements with Seminole Electric Cooperative, Inc. (Seminole).[2] One agreement entitled "Aggregate Billing Partial Requirements Service Agreement" (ABPRSA) contains a proposed two-step partial requirements rate schedule for service to Seminole. The other agreement amends a full requirements tariff service agreement.[3] FPL also tendered for filing a proposed two-step rate increase in its full and partial requirements tariff rates to eleven wholesale customers [4] and various revisions to its Wholesale Electric Tariff. The proposed Phase One Seminole partial requirements rate would produce revenues of approximately $30.7 million and the proposed Phase Two rates would produce additional revenues of approximately $5.9 million, or total revenues of approximately $36.6 million for the twelve month period ending December 31, 1984. The proposed Phase One full and partial requirements tariff rates would increase revenues by approximately $6 million (17.8%) for the twelve month period ending December 31, 1984. The proposed Phase Two requirements rates would increase revenues by an additional $8.3 million or a total increase of approximately $14.3 million (42.3%) for the same period.

FPL requests waiver of the notice requirements and a one day suspension of the proposed Phase One Seminole and tariff rates and a one day suspension of the proposed Seminole agreements all to be effective May 21, 1984. FPL requests that the proposed Phase Two rates be made effective on June 8, 1984. FPL also requests waiver of § 35.13(d)(3) of the Commission's regulations to permit the use of calendar year 1982 data in its Period I study.

FPL proposes several changes in its tariff and Seminole agreements to take effect with the Phase Two rates only. (1) FPL proposes to revise its fuel adjustment clause to incorporate purchased power costs related to economy transactions pursuant to Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities, Order No. 352, FERC Stat. & Reg. ¶ 30,525 (1983) and to incorporate the 1 mill/kWh spent nuclear fuel disposal costs permitted under the Nuclear Waste Policy Act. (2) FPL also proposes to implement a capacity adjustment clause to flow through demand or capacity costs related to long-term purchases. (3) FPL proposes to change the notice provision of its rate schedules to provide for additional prior notice of changes in the plans of its wholesale customers. (4) FPL proposes to change the way the contract demand provisions of its partial requirements rate schedules operate by applying percentage limitations to annual decreases in contract demand as well as increases. (5) FPL proposes to change the "Applicability' clauses in various schedules such that these schedules would no longer be applicable to Seminole.

FPL also proposes a new rate design by removing the rate "tilt" from all the tendered rate schedules such that the energy component of these rates no longer includes any demand-related costs. In addition, FPL requests that the Commission permit it to reflect accelerated recovery of costs for FPL's 500 kV Transmission Project.

Background

FPL currently provides full requirements service to Seminole and its members under FPL's tariff. Seminole gave notice to FPL on May 20, 1983, that service under the tariff is to be

[1] *See* Attachment for rate schedule designations.

[2] Seminole is a generation and transmission cooperative serving eleven distribution cooperatives in the State of Florida. This docket affects six Seminole member systems: Clay Electric Cooperative; Lee County Electric Cooperative; Suwannee Valley Electric Cooperative; Okefenokee Rural Electric Membership Corporation; Glades Electric Cooperative; and Peace River Electric Cooperative.

[3] On May 18, 1984, FPL filed a motion to substitute five documents for the corresponding documents in its original submittal. Four of the revisions represent executed versions of the originally filed service agreements with Seminole (with some minor changes in terms and conditions agreed to by the parties). The fifth revision constitutes an amendment to FPL's Phase One fuel adjustment clause to eliminate any pass-through of non-fuel purchased power costs. The amendments relate only to Seminole which, according to FPL, supports the requested substitutions. Given the customer's concurrence, the revised schedules and exhibits will be accepted for filing in lieu of the originally filed materials and designated as shown on the Attachment to this order.

[4] The wholesale customers are comprised of the Florida Cities which include the Cities of Clewiston, Green Cove Springs, Homestead, Jacksonville Beach, Starke, and Vero Beach, Florida and the Fort Pierce Utilities Authority of the City of Fort Pierce, the Utilities Commission of New Smyrna Beach and the Lake Worth Utilities Authority, Florida; Florida Keys Electric Cooperative; and Seminole. The full requirements tariff insofar as it applies to Seminole would apply only to certain Seminole delivery points—two with service voltage at 230 kV and all the delivery points below 69 kV—specified in the amended full requirements service agreement. These delivery points would be served under the existing full requirements service agreement only until Seminole transfers them at a later date to service under the ABPRSA, at which time the full requirements service agreement with Seminole terminates. All Seminole's other delivery points would continue to be served under the ABPRSA.

terminated on May 20, 1984, so that Seminole may begin supplying a portion of its members' load in FPL's service territory from a newly constructed plant.[5] Late in 1983, FPL and Seminole entered into negotiations concerning the power requirements of Seminole. On March 1, 1983, FPL and Seminole reached an agreement providing for a reduction in service from FPL to Seminole. The two agreements tendered for filing by FPL are the result of that settlement agreement.

Under the first agreement, the ABPRSA, FPL would provide partial requirements service for 20 years at Seminole delivery points on a basis that permits all such delivery points to be treated as a single customer with aggregated billing determinants. The ABPRSA would require Seminole to designate the quantity of power that it will commit on an hourly basis to supply its members' loads in FPL's service territory. FPL would then be required to supply partial requirements service to the extent of the excess of Seminole's members' requirements over and above Seminole's designated commitment. The rate design under the ABPRSA includes a 70% demand ratchet.

Notice of the filing was published in the FEDERAL REGISTER with comments, protests, or motions due on or before May 4, 1984. On May 4, 1984, as amended on May 16, 1984, Seminole filed a Motion to Intervene, Protest, Motion for Summary Rejection, and Request for Other Relief. Seminole supports the waiver of the notice period and a one day suspension for the two agreements tendered for filing and the proposed Phase One partial requirements rate to Seminole. Seminole requests, however, that the Phase One tariff rate be suspended for five months. Seminole also requests a five month suspension of the Phase Two rates. In support of its request for a five month suspension, Seminole cites various cost of service issues including: (1) Excessive rate of return and return on equity; (2) overstatement of O&M expense, cash working capital, decommissioning costs, fuel stock inventory, steamplant depreciation expense, and materials and supplies; (3) misallocation of CWIP to the various wholesale customers; (4) the calculation of the unfunded deferred tax liability; (5) inclusion of cancellation costs associated with the Desoto generating plant; and (6) rate design and terms and conditions. Seminole requests that FPL's request for accelerated depreciation of its 500 kV transmission facilities be rejected. In addition, Seminole requests summary rejection of the inclusion of a 70% demand ratchet in its partial requirements rate and of the proposed capacity adjustment clause.

Seminole also protests FPL's use of average embedded cost as a basis for the partial requirements rates that would be applied to Seminole pursuant to the ABPRSA. Seminole maintains that a stratified rate for its partial requirements service should be used. This issue is currently being litigated in Docket No. EL83-24-000 under Section 206 of the Federal Power Act.[6] Seminole requests that the Commission direct that Seminole's Notice of Withdrawal of Complaint in Docket No. EL83-24-000 be approved without prejudice. Alternatively, Seminole requests that the proceeding in Docket No. EL83-24-000 be held in abeyance and made subject to the outcome of a trial on the stratified rate question in this docket under Section 205 of the Federal Power Act. Seminole states that the proposed partial requirements rate schedule in this docket is more relevant to the stratified rate issue than the rate schedule in evidence in Docket No. EL83-24-000 which would be superseded. Seminole further states that it may suffer the loss of procedural rights related to its burden of proof and right to refunds under section 205 of the Federal Power Act, if the stratified rate issue in this docket is made subject to the outcome of the proceeding in Docket No. EL83-24-000. Seminole also maintains that two separate trials on this issue would involve an unnecessary waste of resources.

On May 7, 1984, Florida Cities filed a late intervention in which they oppose FPL's request for waiver of the 60 day notice period for the tariff rates. Florida Cities also request that FPL's proposed Phase One rate increase be rejected or, in the alternative, suspended for five months.[7] In addition, Florida Cities request that FPL's Phase Two rate increase be suspended for five months. In support of their request for a five month suspension, Florida Cities raise many of the same cost of service issues raised by Seminole. Additionally, Florida Cities state that the Phase One and Phase Two rate increases should be suspended for five months even if they are not found to be unduly excessive. Florida Cities state that FPL has dramatically changed its rate design by removing demand-related costs from the energy rate and including them in the demand rate. Florida Cities state that such a rate design change, coupled with proposals to extend notice provisions and FPL's failure to provide customers with advance notice of the change, may significantly alter the manner in which wholesale customers would seek to purchase power from FPL and increase the probability that Cities will suffer irreparable harm. Florida Cities request an expedited hearing on this rate design issue and on the proposed tariff changes. Florida Cities also allege that the rate increases proposed by FPL will result in a price squeeze and request that the Commission treat price squeeze as a separate factor in determining whether to suspend FPL's rates for five months.

On May 16, 1984, FPL filed an answer to the motions of Seminole and Florida Cities. FPL states that the proposed Phase One rates are cost-justified and should not be rejected or suspended for five months, and that no basis exists for denying waiver of notice for the Seminole Phase One tariff rate. In addition, FPL states that its proposal to eliminate an existing rate "tilt" does not represent an "extraordinary factor" warranting a five month suspension. FPL also asserts that Seminole should not be permitted to withdraw its complaint in Docket No. EL83-24-000. Finally, FPL contends that its proposed 70% demand ratchet and Capacity Adjustment Clause are appropriate and should not be summarily rejected.

Discussion

Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), Seminole's timely motion serves to make it a party to this proceeding. In addition, we find that good cause exists to grant the untimely intervention by Florida Cities.[8] Given the relatively short delay in filing and the early stage of this proceeding, the late intervention should not prejudice any party or unduly delay this case.

[5] Seminole Unit No. 1, a 600 MW coal-fired generating plant located in Northeast Putnam County, Florida, commenced commercial operation on January 31, 1984. A second 600 MW Seminole plant is scheduled to begin commercial operation in January 1985.

[6] By order issued May 3, 1984, the Administrative Law Judge (ALJ) in Docket No. EL83-24-000 denied Seminole's request for reconsideration of the ALJ's April 3, 1984 order denying withdrawal of Seminole's complaint. A subsequent request to refer the denial to the full Commission for disposition was denied by the Motions Commissioner on May 16, 1984.

[7] Florida Cities state that the Phase One rate increase acts as an interim rate which undermines any incentive for a utility to file rates closely aligned with costs.

[8] Florida Cities filed a motion to accept the late motion to intervene on May 7, 1984. In support of their motion, Florida Cities state that the complicated nature of the proposed filing necessitated working on their motion to intervene until the last minute and that traveling was impeded by bad weather.

As noted above, FPL requests waiver of the notice requirements and a one day suspension of the Phase One rates and the proposed Seminole agreements to permit an effective date of May 21, 1984, coincident with the date Seminole terminates full requirements service and initiates service under the ABPRSA. Seminole supports FPL's request for waiver of the notice period for the proposed Seminole agreements but requests maximum suspension of the tariff rates. Florida Cities also request that the waiver be denied for the tariff rates. FPL states that rates based on the same test year should be implemented simultaneously for all wholesale customers and that the change in Seminole's service requires changes in the costs allocated to FPL's other wholesale customers and therefore requires concurrent changes in the Seminole partial requirements rate and the tariff rates.

Good cause exists for waiver with respect to the proposed Seminole agreements and the Phase One Seminole partial requirements rate. These agreements are the result of negotiations between FPL and Seminole and reflect Seminole's new status as a partial requirements customer owning a substantial amount of its own generating capacity. Waiver of the notice period with respect to the Phase One tariff rates, however, will be denied. We acknowledge that removal of a large customer from an average cost rate may affect the company's cost to serve the remaining (new) class and, absent a corresponding change in rates, may affect the company's earned rate of return. However, while FPL's agreement with Seminole may affect FPL's cost to serve the remaining tariff customers, the consequences of FPL's entering into that agreement should not be mitigated by denying the remaining tariff customers the protection of the required 60 days notice of a proposed increase in rates.

FPL also requests waiver of the filing requirements of section 35.13(d)(3) of the Commission's regulations and states that Seminole and Florida Cities support the request for waiver. Under the Commission's regulations, calendar year 1982 data may not be used for Period I for any submittal filed after March 31, 1984. FPL tendered its filing on April 9, 1984 (only nine days after the section 35.13 time requirements). FPL states that it submitted its filing as quickly as possible after negotiations with Seminole had been completed (March 1, 1984) in an attempt to meet Seminole's requested effective date of May 21, 1984. FPL states that the additional time required to complete data for the most recent twelve months for which data are available or for calendar year 1983 would have delayed its filing beyond the May 21, 1984 effective date requested by Seminole. FPL's use of the 1982 calendar year data is reasonable in light of the time constraints upon FPL to meet its customer's request. Accordingly, we shall grant the waiver.

Seminole requests summary disposition of FPL's inclusion of a 70% demand ratchet in its partial requirements contract (ABPRSA) contending that the ratchet would cause Seminole severe hardship when Seminole Unit No. 2 becomes operational and substantially reduces Seminole's demands on FPL. The appropriateness of a demand ratchet presents issues of fact which should be resolved in the course of an evidentiary hearing. We shall, therefore, deny Seminole's request for summary disposition with respect to that issue.

FPL proposes a Capacity adjustment Clause (CAC) which is designed to permit FPL to automatically adjust its rates to reflect changes in the amounts and costs of power purchased under long-term contracts. FPL states that it has entered into unit power supply agreements with other utilities under which FPL will purchase capacity in amounts that vary over the life of the agreements. FPL notes that the costs incurred under the agreements are readily ascertainable under formulas which the Commission has approved; therefore, the Commission will have the opportunity in advance to assess the reasonableness of the costs incurred. FPL also states that the contracts require FPL to take or pay for the capacity and, therefore, cost incurrence is beyond any further management control by FPL. In addition, FPL states that the contracts provide for periodic changes in the amounts purchased and the costs associated with the units committed under the contracts and that each contract has a fixed term; therefore, the costs would not be flowed through the CAC indefinitely. Finally, FPL states that, because the capacity costs incurred will have no direct effect on any other FPL costs, there will be no need to make corresponding adjustments to other costs in the context of a general rate increase, thus reducing the resources expended to make regular rate filings.

FPL's rationale for the proposed CAC presents no basis for deviation from our consistent practice and precedent of disallowing automatic adjustments which track only selected cost components (other than fuel).[9] Indeed, the statements made by FPL that the purchased power commitments are known subject to specified, periodic revisions, and reflect take or pay provisions, indicate that the purchased power costs can be estimated and are therefore appropriate costs to be recovered via a standard rate case rather than through an automatic adjustment clause. The fact that we have already exercised jurisdiction in reviewing the unit sales contracts or that other costs in FPL's cost of service are arguably not directly affected by the purchased power contracts, does not eliminate our responsibility to review all cost components, whether or not directly affected by changes in purchased power costs, in determining the overall rate level for FPL's jurisdictional services. In addition, we note that FPL's long-term purchases will constitute only about 10–20% of FPL's load during the period 1985–1990 and therefore do not approach the total cost of service adjustments previously approved in other cases. Accordingly, FPL's proposed capacity adjustment clause will be summarily rejected.

As part of its filing, FPL requests accelerated depreciation of costs (over a 10 year period) related to a newly constructed 500 kV transmission facility extending to the Georgia border. Although FPL has not included the accelerated depreciation in developing its cost of service statements, it requests that we consider the reasonableness of its proposed rate level taking into account the additional revenue requirements related to the accelerated depreciation schedule. The proposal would increase wholesale revenue requirements by approximately $214,000. We believe that this issue should be pursued at hearing rather than in this initial order.

Our preliminary review of FPL's submittal and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept FPL's rates for filing, as

[9] *See Montaup Electric Company*, 26 FERC ¶ 61,021 (1984); *Nantahala Power and Light Company*, Opinion No. 139, Docket No. ER76–828–000, 19 FERC ¶ 61,152 (1982); *Central Power and Light Company*, Docket Nos. EL79–26 and ER79–600, 11 FERC ¶ 61,102 (1980); *Central Illinois Light Company*, Docket No. ER76–819, Opinion No. 81, 10 FERC ¶ 61,248 (1980); *Central Kansas Power Company*, Docket No. ER79–90, 6 FERC ¶ 61,097 (1979); *Lockhart Power Company*, Docket Nos. E–9469 and ER76–377, Opinion No. 29, 4 FERC ¶ 61,337 (1978); and *Nantahala Power and Light Company*, Docket No. E–9181, 57 FPC 803 (1977).

modified by summary disposition, and we shall suspend them as ordered below.[10]

In *West Texas Utilities Company*, Docket No. ER82–23–000, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our examination of FPL's rates suggests that the Phase One rates may not yield excessive revenues, while the Phase II rates may result in substantially excessive revenues. Accordingly, we shall suspend the proposed Phase One full and partial requirements tariffs for one day from 60 days after filing to become effective on June 10, 1984,[11] subject to refund, and the proposed Phase One Seminole partial requirements rate will be suspended for one day from the proposed effective date to become effective on May 21, 1984, subject to refund. We shall suspend the proposed Phase Two rates for five months to become effective on November 9, 1984, subject to refund.[12]

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79–339, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by Florida Cities.

We shall deny Seminole's request to terminate the proceedings in Docket No. EL83–24–000 or to defer that hearing pending the outcome of a separate hearing in the current case on the stratified rate design question. As noted above, the presiding judge in EL83–24–000 previously denied a similar request. His decision was based largely on the fact that substantial time and resources had been devoted to that case and that it would be counterproductive to initiate an entirely new proceeding on the same issue. We recognize Seminole's concern that it not be foreclosed from any substantive or procedural rights deriving from FPL's intervening rate filing under Section 205 of the Federal Power Act, but we also concur in the judge's desire for administrative efficiency. The presiding judge's order in EL83–24–000 acknowledged that Seminole might seek to establish that additional evidence is warranted on the stratified rate design issue in light of FPL's new rate filing. It may be that FPL would desire a similar opportunity in view of arguments that its pending filing has shifted the burden of proof. However, there appears to be no sound reason to discard the record developed thus far in EL83–24–000 in order to preserve these rights. Instead, we shall consolidate Docket Nos. EL83–24–000 and ER84–379–000 for purposes of hearing and decision on the issue raised by Seminole. The presiding judge shall have the discretion to consider the appropriateness of addressing the stratified rate question in a separate phase of the consolidated proceeding if such an approach would expedite resolution of issues applicable to FPL's remaining customers.

The Commission orders:

(A) The Florida Cities' untimely intervention is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) FPL's motion to substitute various service agreements and exhibits applicable to Seminole is hereby granted.

(C) Seminole's motion for summary disposition as to the 70% demand ratchet is denied. The motions of Seminole and Florida Cities for summary disposition as to the Capacity Adjustment Clause are hereby granted. Within thirty (30) days of the date of this order, FPL shall refile Attachment A to the Phase Two Seminole rate schedules to eliminate the clause. The separate attachments to FPL's remaining rate schedules, which incorporate the clause, will not be designated as parts of the filed rates.

(D) The Intervenors' motions for rejection are hereby denied.

(E) FPL's request for waiver of § 35.13(d)(3) of the Commission's regulations is hereby granted.

(F) FPL's request for waiver of notice as to the Phase One tariff rates is denied. FPL's request for waiver of notice as to the Seminole agreements and the Phase One Seminole partial requirements rate is hereby granted.

(G) FPL's proposed rates and agreements are hereby accepted for filing, as modified by summary disposition: the Seminole agreements and the Phase One Seminole partial requirements rates are suspended for one day, to become effective on May 21, 1984, subject to refund; the Phase One tariff rates are suspended for one day, to become effective on June 10, 1984, subject to refund; and the Phase Two rates are suspended for five months, to become effective on November 9, 1984, subject to refund.

(H) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of FPL's rates.

(I) Docket Nos. EL83–24–000 and ER84–379–000 are hereby consolidated.

(J) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(K) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(L) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(M) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

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[10] Florida Cities' request for rejection of the proposed Phase One tariff rates will be denied. Given the limited waiver of the filing requirements which is granted in this order, FPL's submittal substantially complies with our regulations. Furthermore, the Commission has permitted such phased rate filings on a number of occasions.

[11] FPL's requested effective date of June 8, 1984, is one day short of the required 60 day notice period. We shall deny Florida Cities' request for a five month suspension of the proposed Phase One tariff rates based on price squeeze allegations. The Florida Cities acknowledge that the Commission does not generally consider unproved price squeeze allegations as a separate factor in determining an appropriate suspension period, *citing Carolina Power and Light Co.*, 21 FERC ¶ 61,027 (1982). While they urge a departure from that practice, we are not persuaded that they have cited extraordinary circumstances warranting such a result. Similarly, FPL's proposed change in rate design does not itself justify a maximum suspension of the Phase One rates.

[12] With respect to Florida Cities' request for an expedited hearing, we shall leave to the discretion of the presiding judge the establishment of an appropriate hearing schedule.

ATTACHMENT

Florida Power & Light Company, Docket No. ER84-379-000

Rate Schedule Designations

Designation	Description	Supersedes
(1) FPC Electric Tariff, 1st Revised Volume No. 1	Firm Power—full or partial requirements service	
(i) 2d Revised Sheet No. 2	Table of contents	1st Revised Sheet No. 2.
	Schedule FR-2	
(ii) 11th Revised Sheet No. 5 and 9th Revised Sheet No. 6	Phase 1	10th Revised Sheet No. 5 and 8th Revised Sheet No. 6.
(iii) 12th Revised Sheet No. 5 and 10th Revised Sheet No. 6	Phase 2	11th Revised Sheet No. 5 and 9th Revised Sheet No. 6.
	Schedule PR-3	
(iv) 13th Revised Sheet No. 7 and 10th Revised Sheet No. 8	Phase 1	12th Revised Sheet No. 7 and 9th Revised Sheet No. 8.
(v) 14th Revised Sheet No. 7, 11th Revised Sheet No. 8 and Original Sheet No. 8a.	Phase 2	13th Revised Sheet No. 7 and 10th Revised Sheet No. 8.
	Schedule PRT-3	
(vi) 6th Revised Sheet No. 26, 5th Revised Sheet No. 27 and 5th Revised Sheet No. 28.	Phase 1	5th Revised Sheet No. 26, 4th Revised Sheet No. 27 and 4th Revised Sheet No. 28.
(vii) 7th Revised Sheet No. 26, 6th Revised Sheet No. 27 and 6th Revised Sheet No. 28.	Phase 2	6th Revised Sheet No. 26, 5th Revised Sheet No. 27 and 5th Revised Sheet No. 28.
	Fuel Adjustment Clause	
(viii) 9th Revised Sheet No. 9 and 3rd Revised Sheet No. 9a	Phase 1	8th Revised Sheet No. 9 and 2d Revised Sheet No. 9a.
(ix) 10th Revised Sheet No. 9 and 4th Revised Sheet No. 9a	Phase 2	9th Revised Sheet No. 9 and 2d Revised Sheet No. 9a.
	Tax Adjustment Clause	
(x) 3dRevised Sheet No. 10		2d Revised Sheet No. 10.
(xi) 4th Revised Sheet No. 10		3d Revised Sheet No. 10.
	Index of Purchasers	
(xii) 6th Revised Sheet No. 23		5th Revised Sheet No. 23.
(xiii) 5th Revised Sheet No. 24		4th Revised Sheet No. 24.
(xiv) 5th Revised Sheet No. 25		4th Revised Sheet No. 25.
(2) Rate Schedule FERC No. 77	Seminole ABPRSA	
(3) Supplement No. 1 to Rate Schedule FERC No. 77	Rates and charges—Phase 1	
(4) Supplement No. 2 to Rate Schedule FERC No. 77	Schedule of terms and conditions	
(5) Supplment No. 3 to Rate Schedule FERC No. 77	Delivery points	
(6) Supplement No. 4 to Rate Schedule FERC No. 77	Rates and charges—Phase 2	Supplement No. 1
(7) Service Agreement No. 20 under FPC Electric Tariff, 1st Revised Volume No. 1.	Amended full requirements service agreement	Service Agreement No. 18, as supplemented
(8) Supplement No. 1 to Service Agreement No. 20 under FPC Electric Tariff, 1st Revised Volume No. 1.	Delivery points	

[FR Doc. 84-15186 Filed 6-5-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-360-000]

Central Illinois Public Service Co.; Order Accepting Rates for Filing, Granting Late Intervention, Granting Waiver of Filing Requirements, Denying Waiver of Notice Requirements, and Terminating Docket

Issued: June 1, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

On April 2, 1984, Central Illinois Public Service Company (CIPS) tendered for filing a revised Appendix A to its Wholesale Power Agreement with the City of Sullivan, Illinois (Sullivan).[1] The submittal reflects an increase in Sullivan's current rates for scheduled or short-term firm power, supplemental power and emergency power to the levels presently in effect for CIPS' other partial requirements, wholesale municipal customers under the company's W-3 partial requirements tariff.[2] CIPS' remaining partial requirements municipal customers agreed to the W-3 tariff rates which, upon Commission acceptance, became effective as of January 1, 1983.[3] CIPS asserts that Sullivan utilizes scheduled, supplemental, and emergency power in the same manner as the W-3 tariff customers.

CIPS has not provided a statement comparing sales and services and revenues for the twelve months immediately after the proposed effective date of the rate schedule changes, as required by § 35.13(c)(1) of the Commission's regulations (18 CFR 35.13). The company states that such comparisons cannot be calculated because of the uncertain nature of transactions under the proposed rates and because Sullivan takes no firm power from CIPS. CIPS has, however, included in its filing comparisons for the most recent twelve month period for which data were available, *i.e.*, the period ending February 29, 1984. CIPS requests waiver to the extent that further comparisons may be required. In addition, in order to expedite the company's attempt to equilize rates as between Sullivan and the remaining partial requirements customers, CIPS requests waiver of the notice requirements to allow the proposed rates to become effective on April 1, 1984.

[1] Designated as: *Central Illinois Public Service Company* Supplement No. 3 to Rate Schedule FERC No. 82 (Supersedes Supplement No. 2)

[2] The W-3 tariff also includes firm requirements rates, although Sullivan has not contracted for that service.

[3] 21 FERC ¶ 61,388 (December 30, 1982).

Notice of CIPS' filing was published in the **Federal Register** with comments due on or before April 25, 1984. Sullivan filed an untimely intervention on April 30, 1984. Sullivan asserts that it is not a W–3 contract customer of CIPS and protests CIPS' effort to apply the W–3 rates to it. The City, however, has identified no specific objections to the proposed rates.

Discussion

Initially, we find that good cause exists to grant Sullivan's untimely intervention inasmuch as it is the only wholesale customer to which CIPS' filing applies, the delay in filing was relatively short, and the late intervention has caused no undue delay.

Based on our review of CIPS' filing, we find that the proposed rate will not produce excessive revenues. As noted, the rates proposed for Sullivan are identical to scheduled, supplemental, and emergency power rates now in effect for CIPS' other partial requirements municipal customers. Further, Sullivan has offered no support for its contention that services provided to it are different from corresponding services to the other CIPS customers, and we are aware of no such distinction. Under these circumstances, no reasonable grounds appear to warrant a hearing in this docket. Accordingly, we shall accept CIPS' submittal for filing without suspension.

We find that good cause exists to grant CIPS' request for waiver of any further comparison statements under § 35.13(c) of the regulations. However, we shall deny CIPS' request for waiver of the sixty day notice requirement. CIPS' assertion that waiver will permit a more prompt equalization of rates among similar customers does not constitute good cause for granting waiver of the notice requirements. Nor is good cause shown by CIPS' assertion that its other customers will not be affected by a waiver. CIPS was free to unilaterally seek higher rates from Sullivan but, for unspecified reasons, elected not to do so until some 16 months after its W–3 tariff rates became effective. No good cause for waiver having been shown we shall, therefore, accept CIPS' rates for filing to become effective sixty days after filing on June 2, 1984.

The Commission orders:

(A) Sullivan's untimely intervention is hereby granted pursuant to the Commission's Rules of Practice and Procedure.

(B) CIPS' request for waiver of comparison requirements under § 35.13(c) of the Commission's regulations is granted.

(C) CIPS' request for waiver of the notice requirements is denied.

(D) CIPS' proposed rates for service to the City of Sullivan are hereby accepted for filing, to become effective without suspension of hearing, on June 2, 1984.

(E) Docket No. ER84–360–000 is hereby terminated.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb.

Secretary.

[FR Doc. 84–15183 Filed 6–5–84; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66110; PH–FRL 2596–6]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Distribution or sale of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: July 6, 1984.

ADDRESS:

By mail, submit comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 718C, CM#2 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
239–1834	Ortho Wheat Seed Protectant (Slurry)	Chevron Chemical Co., Ortho Division, 940 Hensley St., Richmond, CA 94804.	June 11, 1963.
239–1841	Ortho Drill Box Wheat Seed Protectant	....do	July 3,1963.
239–2345	Ortho HCB 4 Flowable Seed Protectant	....do	Apr. 28, 1971.
239–2426	Ortho HCB 2–2 Flowable Seed Protectant	....do	Feb. 13, 1975.
359–293	No Bunt "40"	Rhone-Poulenc Inc., Agrochemicals Div., P.O. Box 125, Monmouth Junction, NJ 08852.	Mar. 14, 1956.
359–385	Rhodia No Bunt Liquid	....do	May 23, 1960.
359–638	Hexachlorobenzene (Technical Grade)	....do	Sept. 28, 1971.
476–1514	Captan-Hexachlorobenzene 40–40 Seed Protectant	Stauffer Chemical Co., 1200 S. 47th St., Richmond, CA 94804	Nov. 1, 1960.
476–2080	Captan-Hexachlorobenzene 20–20 Seed Protectant	....do	Mar.19, 1971.
476–2082	Captan-HCB 20–20–20 Seed Protectant	....do	Mar. 31, 1971
476–2143	Captan-Hexachlorobenzene 40–10 Seed Protectant	....do	Aug. 27, 1973.
541–203	Pzazz Bacteriostatic Cream Cleanser	Puritan/Churchill Chemical Co., 916 Ashby Street NW., Atlanta, GA 30318	Apr. 30, 1969.
554–128	Agsco DB-Yellow-A Seed Disinfectant	Agsco Inc., P.O. Box 458, Grand Forks, ND 58201	Jan. 3, 1972.
802–132	Miller's Smut-Go-40	Chas. H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218	May 28, 1954.
2217–534	Res-Q Seed Disinfectant Powder	PBI-Gordon Corp., P.O. Box 4090, Kansas City, MO 64101	May 25, 1971.

Registration No.	Product name	Registrant	Date registered
2217-562	Dual Purpose Res-Q	do	Jan. 9, 1973.
2217-564	Res-Q-100 Seed Disinfectant and Protectant Dust or Slurry	do	Oct. 5, 1972.
8203-9	Granox N-M Fungicide Seed Treatment	ICI Americas Inc., Wilmington, DE 19897	Jan. 28, 1969.
8203-22	Granox Flowable Fungicide Seed Treatment	do	Feb. 12, 1975.
8340-16	Trifluralin Technical	American Hoechst Corp., Agricultural Div., Route 202-206, North Somerville, NJ 08876.	Sep. 16, 1983.
10107-75	Seed Shield Maneb/HCB Flowable	Cornbelt Chemical Co., P.O. Box 410, McCook, NB 69001	Mar. 25, 1983.
10107-76	Seed Shield Maneb/HCB Planter Box Seed Treater	do	Mar. 28, 1983.
10912-3	THIHEX	Haynes Chemical Co., P.O. Box 30, East Grand Forks, MN 56721	Aug. 19, 1975.
33861-2	Sowatic I	Agri Future Co., Rte. 1, Box 189, Isle, MN 56342	Aug. 27, 1975.
34704-37	Clean Crop M50-H10 Seed Protectant for Small Grains	Platte Chemical Co., 150 South Main, Fremont, NB 68025	Apr. 26, 1976.
34704-47	Seed Treat Drill Box and Slurry #40	do	Sept. 1, 1977.
34704-48	Clean Crop HCB Seed	do	Do.
43789-90	Maneb-HCB Planter Box Seed Treater	Agricultural Products Co., P.O. Box 8658, Fort Worth, TX 76112	Feb. 26, 1982.

The Agency has agreed that each concellation shall be effective July 6, 1984 unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of concellation may legally continue in commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Sale or distribution of any quantity of any of these products produced after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 ST., SW., Washington, D.C. 20460.

Comments may be filed regading this notice. Written comments shoud bear a notation indicating the document control number "[OPP-66110]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended, 86 Stat. 973, 89 Stat. (751, 7 U.S.C. 136))

Dated: May 17, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84-14492 Filed 6-5-84; 8:45 am]

BILLING CODE 6450-01-M

[(OPP-50603B); PH-FRL-2601-1]

Amendment of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an amended application for an experimental use permit from the U.S. Department of Agriculture's (USDA) Forest Service. The amendment to the experimental use permit (EUP), 49849-EUP-1, proposes allowing the use of .56 pound of sodium fluoroacetate (Compound 1080) in grain bait on rangeland to evaluate the control of black-tailed prairie dogs. The USDA proposes to treat a total of 900 acres in South Dakota.

DATE: Written comments must be received on or before July 5, 1984.

ADDRESS: Comments should bear the document control number "OPP-50603B" and should be submitted by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

The public record regarding this notice will be available for public inspection in Rm. 236, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: William Miller, Product Manager (PM 16), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of May 23, 1984 (49 FR 21794) announcing the issuance of an EUP to USDA's Forest Service. The EUP, 49849-EUP-1, approved the experimental use of Compound 1080 in grain bait or rangeland to evaluate the control of black-tailed prairie dogs. A total of .0009 pound of Compound 1080 was authorized for use on a maximum of 75 acres in the State of South Dakota. The permit is effecitive from November 21, 1983 to November 21, 1984.

The USDA has requested the EUP be amended to allow for efficacy testing of Compound 1080 in grain baits composed of a lower concentration of the toxicant than was previously approved. The three bait concentrations requested in this amendment are 0.0352 percent, 0.022 percent, and 0.11 percent of Compound 1080; whereas 0.125 percent of Compound 1080 was previously approved. The proposed amendment is limited to testing to evaluate the field effectiveness of Compound 1080 at these two lower dose levels as compared to the standard dose of 0.11 percent used historically for the control of prairie dogs.

The proposed amendment would expand the acreage authorized under the present permit from a maximum of 75 acres to a maximum of 900 acres and would increase the amount of Compound 1080 from .0009 pound to 0.56 pound.

Because of the regulatory history of Compound 1080, the Agency has determined that his application may be of regional or national significance. Therefore, in accordance with 40 CFR 172.11, the Agency is soliciting public comments on this request for an amendment to an experimental use permit.

Dated: May 22, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-14972 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

[(OPP-30241); PH-FRL-2601-3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register certain pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comments by July 5, 1984.

ADDRESS: By mail submit comments identified by the document control number [OPP-30241] and the registration/file number, attention Product Manager named in each application at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone No.	Address
PM-32: Arturo Castillo.	Rm. 229, CM#2 (703-557-3965).	EPA—1921 Jefferson Davis Hwy., Arlington, VA 22202
PM-21: Henry Jacoby.	Rm. 229, CM#2 (703-557-1900).	Do.
PM-16: William Miller.	Rm. 211, CM#2 (703-557-2600).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered pesticide products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. Filed Symbol: 38906-RU. Applicant: Glyco Inc., 51 Weaver St., P.O. Box 700, Greenwich, CT 06836-0700. Product name: Dantobrom ™. Disinfectant. Active ingredients: 1-Bromo-3-chloro-5,5-dimethylhydantoin 60.0%, 1,3-dichloro-5,5-dimethylhydantoin 27.4%, and 1,3-dichloro-5-ethyl-5-methylhydantoin 10.6%. Proposed classification/Use: General. For manufacturing use only. Type registration: Conditional. (PM-32)

2. File Symbol: 38906-RE. Applicant: Glyco Inc., 51 Weaver St., PO Box 700, Greenwich, Ct 06836-0700. Product name: Dantobrom ™ RW. Disinfectant. Active ingredients: 1-Bromo-3-chloro-5,5-dimethylhydantoin 60.0%, 1,3-dichloro-5,5-dimethylhydantoin 27.4%, and 1,3-dichloro-5-ethyl-5-methylhydantoin 10.6%. Proposed classification/Use: General. For use in recirculating cooling tower waters. Type registration: Conditional. (PM-32)

3. File Symbol: 38906-RG. Applicant: Glyco Inc. Product name: Dantobrom ™ S. Disinfectant. Active ingredients: 1-Bromo-3-chloro-5,5-dimethylhydantoin 60.0%, 1,3-dichloro-5,5-dimethylhydantoin 27.4%, and 1,3-dichloro-5-ethyl-5-methylhydantoin 10.6%. Proposed classification/Use: General. For use in spas and hot tubs. Type registration: Conditional. (PM-32)

4. File Symbol: 38906-T. Applicant: Glyco Inc. Product name: Dantochlor ™ RW. Disinfectant. Active ingredients: 1,3-Dichloro-5,5-dimethylhydantoin 76.0%, 1,3-dichloro-5-ethly-5-methylhydantoin 13.0%, and 1-chloro-5,5-dimethylhydantoin, 1-chloro-5-ethyl-5-methylhydantoin 10.0%. Proposed classification/Use: General. For control of bacteria and fungi in recirculating cooling tower waters. Type registration: Conditional. (PM-32)

5. File Symbol: 38906-O. Applicant: Glyco Inc. Product name: Dantochlor ™. Disinfectant. Active ingredients: 1,3-Dichloro-5,5-dimethylhydantoin 76.0%, 1,3-dichloro-5-ethyl-5-methylhydantoin 13.0%, and 1-chloro-5,5-dimethylhydantoin, 1-chloro-5-ethyl-5-methylhydantoin 10.0%. Proposed classification/Use: General. For manufacturing use only. Type registration: Conditional. (PM-32)

6. File Symbol: 1471-RUA. Applicant: Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285. Product name: Rubigan ® E.C. Fungicide. Active ingredient: Fenarimol, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol 12.5%. Proposed classification/Use: General. For control of scab and powdery mildrew on pecans. (PM-21)

II. Products Involving a Changed Use Pattern

1. File Symbol: 47325-L. Applicant: Boma Enterprises, Inc., 600 Railway St., Williamsport, PA 17701. Product name: Dead-End. Rodenticide. Active ingredient: Warfarin, 3-alpha-acetonylbenzyl)-4-hydroxycoumarin 0.025%. Proposed classification/Use: General. To include in its presently registered use in an around buildings, new use for the control of orchard mice, meadow and pine voles in orchards and nurseries. Type registration: Conditional. (PM-16)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the exent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: May 22, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-14971 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

[(OPP-180648); PH-FRL-2601-4]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below. Details of an emergency exemption granted to the U.S. Department of the Interior are also given.

DATES: See each specific exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name of the contact person. The following information applies to all contact people: By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of mevinphos on watercress to control aphids; April 10, 1984 to October 31, 1984. (Libby Welch)

2. Arizona Commission of Agriculture and Horticulture for the use of methamidophos on pistachios to control leaf-footed plant bug and Lygus sp.; May 3, 1984 to September 15, 1984. (Jim Tompkins)

3. Delaware Department of Agriculture for the use of azinphosmethyl on carrots to control carrot weevils; April 25, 1984 to September 30, 1984. (Gene Asbury)

4. Maryland Department of Agriculture for the use of ethephon on wheat and barley to control lodging; April 25, 1984 to June 30, 1984. (Gene Asbury)

5. Maryland Department of Agriculture for the use of azinphosmethyl on carrots to control carrot weevils; April 25, 1984 to August 31, 1984. (Gene Asbury)

6. Michigan Department of Agriculture for the use of metolachlor on broccoli, brussels sprouts, cabbage, and cauliflower to control weeds; April 24, 1984 to July 31, 1984. (Libby Welch)

7. Michigan Department of Agriculture for the use of permethrin on grapes to control climbing cutworms; April 13, 1984 to May 15, 1984. (Gene Asbury)

8. New Hampshire Department of Agriculture for the use of methiocarb on grapes grown for wine to control depredating birds; April 19, 1984 to November 1, 1984. (Gene Asbury)

9. New Jersey Department of Environmental Protection for the use of azinphosmethyl on carrots to control carrot weevils; April 25, 1984 to July 31, 1984. (Gene Asbury)

10. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray mold; April 25, 1984 to September 30, 1984. (Jack E. Housenger).

11. New York Department of Environmental Conservation for the use of azinphosmethyl on carrots to control carrot weevils; April 25, 1984 to September 30, 1984. (Gene Asbury)

12. New York Department of Environmental Conservation for the use of methiocarb on grapes grown for wine to control depredating birds; April 19, 1984 to November 1, 1984. (Gene Asbury)

13. Ohio Department of Agriculture for the use of methicarb on grapes grown for wine to control bird depredation; April 30, 1984 to November 1, 1984. (Gene Asbury)

14. Oklahoma Department of Agriculture for the use of permethrin on collards, kale, mustard, and turnip greens to control cabbage loopers; April 20, 1984 to June 1, 1984. (Jim Tompkins)

15. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray mold; April 20, 1984 to September 15, 1984. (Jack E. Housenger)

16. Pennsylvania Department of Agriculture for the use of mevinphos on watercress to control aphids: April 10, 1984 to October 31, 1984. (Libby Welch)

17. Washington Department of Agriculture for the use of vinclozolin on caneberries to control Botrytis fruit rot; April 25, 1984 to July 31, 1984. (Gene Asbury)

18. Washington Department of Agriculture for the use of vinclozolin on snap beans to control gray mold; April 20, 1984 to September 15, 1984. (Jack E. Housengera)

19. West Virginia Department of Agriculture for the use of mevinphos on watercress to control aphids; April 10, 1984 to October 31, 1984. (Libby Welch)

20. Wyoming Department of Agriculture for the use of ethephon on wheat and barley to control lodging; April 25, 1984 to August 31, 1984. (Gene Asbury)

21. U.S. Department of the Interior, Fish and Wildlife Service for the use of sodium cyanide in the M-44 device on several uninhabited islands within the Aleutian Islands unit to eradicate arctic foxes, predators of the endangered Aleutian Canada Goose in Alaska; May 16, 1984 to May 15, 1985. (Libby Welch)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: May 22, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 14970 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

[(OPP-31063B); PH-FRL 2601-5]

Fibre Treatments Ltd.; Approval of Application to Conditionally Register a Pesticide Product Involving a Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has approved the application by Fibre Treatments Ltd., to conditionally register the disinfectant product Wipex, involving a changed use pattern pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Arturo Castillo, Product Manager PM 32, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 244, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-3965).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of August 31, 1983 (48 FR 39501), which announced that Fibre Treatments Ltd., Smallshaw Industrial Estate, Accrington Rd., Burnley Lancashire, BB115SR England, (formerly Wipex Laboratories Corp., c/o U.S. Corporation Co., 306 South Dover St., Kent, DE 19901), had submitted an application to conditionally register the disinfectant product Wipex, containing the active ingredients polyhexamethylene bisquanide hydrochloride, (P.H.M.B.) at 3.6 percent and alkyl dimethyl benzyl ammonium chloride, $C_{12}=C_{18}$ at 8.9 percent. The application proposed a change use pattern of the product.

The application was approved on April 30, 1984 for general use as a disinfectant impregnated cloth. The

product was assigned EPA Registration No. 50096–1.

A copy of the approval label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St. SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number; and (2) specify the data or information desired:

(Sec. 3(c)(2) FIFRA, as amended)

Dated: May 21, 1984

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84–14825 Filed 6–5–84; 8:45 am]

BILLING CODE 6560–50–M

[PF–378; PH–FRL 2602–2]

Certain Companies; Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS:

By mail submit comments identified by the document control number [PF–378] and the petition number, attention Product Manager (PM–21), at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby (PM–21), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

Initial Filings

1. *PP 4E3079.* Chevron Chemical Company, 940 Hensley St., Richmond, CA 94804–0036. Proposes amending 40 CFR 180.191 by establishing tolerance for the residues of the fungicide folpet [*N*-(trichloromethylthio)phthalinide] in or on the commodity kiwifruit at 10.0 parts per million (ppm). The proposed analytical method for determining residues is gas chromatography with electron capture detection.

2. *PP 4E3080.* Chevron Chemical Co. Proposes amending 40 CFR 180.267 by establishing tolerance for the residues of the fungicide captafol (cis-*N*-[(1,1,2,2-tetrachloroethyl)thiol]-4-cyclohexene-1,2-dicarboximide) in or on the commodity kiwifruit at 5.0 ppm. The proposed analytical method for determining residues is gas chromatography using electron capture detection.

3. *PP 4F3086.* Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285. Proposes amending 40 CFR Part 180 by establishing tolerance for residues of the fungicide fenarimol (alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol) in or on the commodity pecans at 0.1 ppm.

The proposed analytical method for determining residues is gas chromatography using an electron capture detector.

(Sec. 408(d)(2) 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: May 25, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–15170 Filed 6–5–84; 8:45 am]

BILLING CODE 6560–50–M

[PF–375; PH–FRL 2602–1]

Rhone-Poulenc Inc., Pesticide Tolerances Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the amendment and/or withdrawal of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS:

By mail, submit comments identified by the document control number [PF–375] and the petition number, attention Product Manager (PM) named in each petition, at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS–757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8:00 a.m. to 4 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide

Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM-21; Henry Jacoby.	Rm. 229, CM#2 (703-557-1900).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM-23; Richard Mountfort.	Rm. 237, CM#2 (703-557-1830).	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and feed additive (FAP) petitions relating to the amendment and/or withdrawal of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

I. Amended Petitions

1. *PP 3F2964.* Rhone-Poulenc Inc., Agrochemical Division, P.O. Box 125 Black Horse Lane, Monmouth Junction, NJ 08852. EPA issued a notice published in the **Federal Register** of November 23, 1983 (48 FR 52974) which announced that Rhone-Poulenc Inc., had submitted pesticide petition (PP) 3F2964 to the Agency proposing to amend 40 CFR 180.399 by establishing tolerances for the combined residues of the fungicide iprodione in or on the commodities as follows:

a. Iprodione, its isomer [3-(1-methlethyl)-*N*-3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the raw agricultural commodity grapes at 60 parts per million (ppm).

b. Iprodione and its non-hydroxylated metabolites in or on the commodities eggs at 0.8 ppm, fat, meat, and meat byproducts (except kidney and liver) of cattle, goats, hogs, horses, and sheep at 0.4 ppm, and kidney and liver of cattle, goats, hogs, horses, and sheep at 3.0 ppm.

c. Iprodione and its non-hydroxylated and hydroxylated metabolites in or on the commodity milk at 0.3 ppm.

Rhone-Poulenc Inc. has amended the petition as follows:

(1). Redesignating a tolerance for iprodione and its non-hydroxylated metabolites of 0.4 ppm for fat (except poultry fat), and meat and meat byproducts (except liver and kidney of cattle, goats, hogs, horses, and sheep, and liver of poultry).

(2). Decreasing the tolerance for liver and kidney of cattle, goats, hogs, horses, and sheep to 0.4 ppm.

(3). Adding tolerances for iprodione and its nonhydroxylated metabolites of 3.0 ppm for poultry liver and 2.0 ppm for poultry fat.

The proposed analytical method for determining residues is thin-layer chromatography. (PM-21.)

2. *FAP 4H5415.* Rhone-Poulenc Inc. EPA issued a notice published in the **Federal Register** of November 23, 1983 (48 FR 52975) which announced that Rhone-Poulenc had submitted feed additive petition (FAP) 4H5415 to the Agency proposing to amend 21 CFR Part 561 by establishing a regulation permitting residues of the fungicide iprodione, its isomer [3-(1-methylethyl)-*N*-3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide in or on the commodities raisin waste at 1,000 ppm, and dried grape pomace at 225 ppm.

Rhone-Poulenc Inc., has amended the petition by decreasing the proposed tolerance for raisin waste from 1,000 ppm to 300 ppm. (PM-21.)

II. Petition Withdrawal

PP 6F1717. EPA issued a notice published in the **Federal Register** of May 12, 1982 (47 FR 20379) which announced that Rhone-Poulenc Inc., had submitted pesticide petition (PP) 6F1717 proposing to amend 40 CFR 180.360 by establishing tolerances for residues of the herbicide asulam (methyl-4-sulfaniycarbamate) and its metabolites containing sulfanilamide moiety (*N*^{4}-acetylasulam) and (*N*^{4}-acetylsulfanilamide as asulam equivalents in or on the commodities fresh grass at 35 ppm, and hay of grass at 130 ppm.

Rhone-Poulenc Inc. has withdrawn this petition without prejudice to future filing. (PM-23.)

(Secs. 408(d)(2) 68 Stat. 512 [21 U.S.C. 346a(d)(2)), 409(c)(1), 72 Stat. 1786 [21 U.S.C. 348(c)(1)])

Dated: May 25, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-15171 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL 2602-6]

Request for Cooperative Agreement Applications From a University Consortium to Conduct Symposia for Ground-Water Pollution Control

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Ground-Water Protection Office in the Office of Water is interested in receiving applications for proposals for a cooperative agreement from a University Consortium to conduct a number of symposia and develop papers pertinent to ground-water pollution control.

DATE: Completed application proposals are due in the Office of Ground-Water Protection, Office of Water by close of business on July 31, 1984.

Administrative Information

Requests for application kits or questions concerning cooperative agreement policies should be addressed to: U.S. Environmental Protection Agency, Grants Administrative Division, Grants Operations Branch, Washington, D.C. 20460, Telephone 202-382-5266.

Technical Information

Marian Mlay, Director, Office of Ground-Water Protection [WH-550], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Telephone 202-382-7077.

SUPPLEMENTARY INFORMATION: The consortium will consist of several universities under a lead university—the lead university being the recipient and the responsible agent. We expect only one proposal to be funded, and we reserve the right not to fund any.

The symposia and resulting papers on Ground-Water Pollution Control should be useful in policy and program planning and development and implementation. Information will benefit individuals and groups in the public and private sectors, expecially to States and localities. A variety of topics will be examined of either national or, if appropriate, geographic relevance. They should relate to the social, economic, legal, and technical aspects among others of ground-water pollution control. The topics should be of principal concern to policy-makers particularly, persons in State and local government in planning and implementing ground-water protection programs, as well as Federal policy-makers, individuals at universities, scientists, attorneys, researchers, educators, hydrologists, engineers, industry, environmentalists and other individuals with similar interests.

The approaches to structuring the symposia must be of a multi-disciplinary nature, while at the same time focusing on specific issues and audiences. It is recognized that any single symposia might not be able to be relevant to all groups.

As a result of each symposia, one or more papers will be developed speaking to the issues discussed and conclusions

reached. It is anticipated that these papers will be published in peer review journals. All such publications must be made available to EPA and to States.

The proposal submitted to EPA should include statements from the applicant accompanied by support statements from the other consortium members stating in detail the technical qualifications of key university staff available as participants. These statements must show demonstrated faculty skills in the participating universities pertinent to ground-water issues and indicating how these skills would be utilized. The applicant must show that they also have a multi-disciplinary group to manage the symposia. The proposal shall outline in detail the strategy to be used to identify symposia topics, identify types and general numbers of participants, and identify approaches to conducting the symposia. As part of the proposal, the applicant should suggest some topics that could be covered and why they believe they are relevant.

The project is limited to a 24-month period, with the first symposia to be held within 4 months of the start of the cooperative agreement. EPA anticipates that up to $250,000 will be available for the project period and $100,000 available for the first budget year. We expect between 3–4 symposia to be held during the first year, and 7–10 held in total during the 2 years. We expect the recipient to work closely with the Office of Ground-Water Protection, EPA, and individuals designated by that Office, particularly in developing topics and audiences.

Individuals having questions concerning the programmatic aspects of this statement may contact Ms. Marian Mlay at the address listed above.

Dated: May 30, 1984.

Henry Longest III,

Acting Assistant Administrator for Water.

[FR Doc. 84-15167 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50616; PH-FRL 2602-3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contract the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA,

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

8340-EUP-7. Issuance. American Hoechst Corporation, Route 202-206 North, Somerville NJ 08876. This experimental use permit allows the use of 270 pounds of the herbicide ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate on soybeans to evaluate the control of annual and perennial grasses. A total of 1,500 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from April 11, 1984 to January 1, 1985. This permit is issued with the limitation that the label feeding instructions prohibit grazing and the use of treated forage, hay, or straw. Temporary tolerances for residues of the active ingredient in or on soybeans have been established. (Richard Mountfort, PM 23, Rm. 237, CM#2 (703-557-1830))

1471-EUP-86. Issuance. Elanco Products Companys, 740 S. Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 2,362.5 pounds of the fungicide fenarimol on pecans to evaluate the control of fungal leaf scorch, liver spot, powdery mildew, and scab. A total of 1,400 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, and Texas. The experimental use permit is effective from April 18, 1984 to January 1, 1986. A temporary tolerance for residues of the active ingredient in or on pecans has been established. (Henry Jacoby, PM 21 Rm. 229, CM#2 (703-557-1900))

45639-EUP-17. Issuance. NOR-AM Chemical Co., 4311 Lancaster Pike, P.O. Box 2867, Wilmington, DE 19805. This experimental use permit allows the use of 24.25 pounds of the miticide amitraz in ear tags on beef cattle and hogs to evaluate the control of ticks. A total of 2,000 beef cattle and 2,500 hogs are involved; the program is authorized only in the States of Arkansas, California, Indiana, Iowa, Kansas, Louisiana, Nebraska, New Mexico, North Carolina, Oklahoma, and Texas and the territory of Puerto Rico. The experimental use permit is effecive from April 12, 1984 to September 9, 1984. A temporary tolerance for residues of the active ingredient in the meat, fat, and meat byproducts of beef cattle and hogs has been established. (Jay Ellenberger, PM 12, Rm. 207, CM#2 (703-557-7024))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95-396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: May 25, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Peticide Programs.

[FR Doc. 84-15169 Filed 6-5-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2783/T446; PH-FRI 2602-4]

1-(Carboethoxy)Ethyl 5-[2-Chloro-4-(Trifluoromethyl)Phenoxy]-2-Nitrobenzoate; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for residues of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate in or on the raw agricultural commodity soybeans.

DATE: This temporary tolerance expires April 30, 1985.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis

Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of May 25, 1983 (48 FR 23476), announcing the establishment of a temporary for residues of the herebicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm). This tolerance was issued in response to pesticide petition PP 3G2783 submitted by PPG Industries, Inc., P.O. Box 31, Barberton, OH 44203.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 748–EUP–18, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the herbicide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used will not exceed the quantity authorized by the experimental use permit.

2. PPG Industries, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 30, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the herbicide is legally applied during the term of, and accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this herbicide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: May 25, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–15168 Filed 6–5–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100010; PH–FRL 2599–8]

Pesticide Programs; Development Planning and Research Associates; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under section 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to the Development Planning and Research Associates, 200 Research Drive, Manhattan, Kansas 66502, under Contract No. 68–02–4064. This contractor will provide economic analyses of pesticide usage, in support of benefit analyses being conducted by EPA on various pesticides under authorities granted by FIFRA. Some of the information that will be made available to this contractor has been claimed to be confidential business information (CBI). Development Planning and Research Associates has met all the requirements of 40 CFR 2.301(h)(2) and consequently the data will be transferred for performance of the contract. The action will enable Development Planning and Research Associates to fulfill the obligations of the contract, and this notice serves to notify affected persons.

DATE: The Development Planning and Research Associates will be given access to these documents no sooner than June 11, 1984.

FOR FURTHER INFORMATION CONTACT: By mail: William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703–557–2613).

SUPPLEMENTARY INFORMATION: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 10(e) provides that confidential business information (CBI), or business information which is alleged to be confidential, may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA section 7. Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the contract with Development Planning and Research Associates, of Manhattan, Kansas.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an EPA employee or an EPA contractor.

The contract with Development Planning and Research Associates specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and personnel of this contractor will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: May 22, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84–14668 filed 6–5–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 84–535, et al.; File Nos. BP–20497, et al.]

Fairbanks Broadcasting Company of Massachusetts, Inc., et al.; Hearing Designation Order

In the matter of applications of Fairbanks Broadcasting Company of Massachusetts, Inc., WKOX, Framingham, Massachusetts, Has: 1190 kHz, 1 kW, D, Req: 1200 kHz, 1 kW, 10 kW–LS, DA–N, U (MM Docket No. 84–535, File No. BP–20497); Radio Wage, Inc., WAGE, Leesburg, Virginia, Has: 1290 kHz, 1 kW, D, Req: 1200 kHz, 1 kW, 5 kW–LS, DA–N, U (MM Docket No. 84–536, File No. BP–800813AB); SOQ Broadcasting Corp., WEZG, North Syracuse, New York, Has: 1220 kHz, 1

kW, D, Req: 1200 kHz, 1 kW, DA–N, U (MM Docket No. 84–537, File No. BP–800819AD); Bell Broadcasting Company, WCHB, Inkster, Michigan, Has: 1440 kHz, 1 kW, DA–2, U, Req: 1200 kHz, 1 kW, 50 kW–LS, DA–2, U (MM Docket No. 84–538, File No. BP–801119AA); Tolland County Broadcasting, Inc., WRTT, Vernon, Connecticut, Has: 1170 kHz, 1 kW, DA–2, U, Req: 1200 kHz, 1 kW, DA–2, U (MM Docket No. 84–539, File No. BP–801205AL); Lawrence County Broadcasting Corporation, WBZY, New Castle, Pennsylvania, Has: 1140 kHz, 5 kW, DA–D, Req: 1200 kHz, 1 kW, 10 kW–LS, DA–N, U (MM Docket No. 84–540, File No. BP–810105AA); Hudson Horizons, Inc., WGNY, Newburgh, New York, Has: 1220 kHz, 5 kW, DA–D, Req: 1200 kHz, 1 kW, 10 kW–LS, DA–2, U (MM Docket No. 84–541, File No. BP–810113AB).[1]

Hearing Designation Order

Adopted: May 21, 1984.
Released: June 7, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration (a) the mutually exclusive applications of Fairbanks Broadcasting Company of Massachusetts, Inc. (Fairbanks), Radio WAGE, Inc. (WAGE), SOQ Broadcasting Corporation (SOQ),[1] Bell Broadcasting Company (Bell),[2] Tolland County Broadcasting, Inc. (Tolland), Lawrence County Broadcasting Corporation (Lawrence)[3] and Hudson Horizons, Inc. (Hudson); (b) a petition to dismiss and/or deny, and for other appropriate relief against all of the above-captioned applications except Hudson filed by Clear Channel Communications, Inc. (CCCI), licensee of Station WOAI, San Antonio, Texas; (c) comments and contingent objections against the Fairbanks application, filed by CCCI; (d) a petition to intervene and to deny and supplements thereto against the Bell application, filed by Wayne Broadcasting Corporation (Wayne),[4] licensee of Station WOWO, Fort Wayne, Indiana; and (e) other related pleadings.

2. *The WOAI comments, contingent objections and petition.* CCCI seeks an inquiry into the effect of the pending proposals on the nighttime operation of WOAI, arguing that new services on its frequency may cause interference to existing WOAI listeners. As we have previously and finally determined though, we have acknowledged the possibility of such interference but have found it a necessary cost of satisfying the need for additional services on the Class I–A clear channels, *Clear Channel Broadcasting in the AM Broadcast Band*, 78 FCC 2d 1345, 1367; *recon. granted in part and denied in part*, 83 FCC 2d 216 (1981); *aff'd sub nom. Loyola University* v. *FCC*, 670 F. 2d 1222 (D.C. Cir. 1982). No basis for further inquiry thus exists.

3. *The WOWO petition.* Petitioner Wayne originally alleged that the Bell application would cause prohibited interference to its first adjacent channel station WOWO. The applicant then amended the application in order to eliminate the prohibited overlap. In a later supplement to its petition, Wayne alleged that prohibited overlap with WOWO would still result from Bell's proposed operation, as amended, unless grant of the application was subject to certain conditions. The conditions would designate Bell's daytime antenna system as a critical array.

4. It is our policy to consider as being generally stable directional arrays which do not exceed their radiation limits with 1.0 percent current ratio and 1.0 degree phase deviation. We consider those arrays which exceed their radiation limits with parameter variations of 0.1 percent and 0.1 degree highly unstable. Where arrays exceed their radiation limits within these parameter variations, we will condition a grant accordingly.[5] Our computerized studies here indicate that the Bell operation would exceed specified standard radiation values with variations of 0.5 percent current ratio deviation and 0.5 degree phase deviation. Thus, the proposal falls into the category where stability conditions are called for.

5. *Other matters* The Commission has not yet received Federal Aviation Administration clearance for the antenna towers proposed by SOQ, Bell, Lawrence, and Hudson. Accordingly, an appropriate issue will be specified.

6. Section V–G for Antenna and Site Information of the application form (FCC Form 301) has been omitted from the SOQ, Bell, and Lawrence proposals. These applicants must, therefore, file the required section with the Administrative Law Judge within 30 days of the release of this Order.

7. Since the Hudson[6] proposal constitutes a major environmental action as defined by § 1.1305(a) of the Commission's Rules, the applicant is required to submit the environmental narrative information described in § 1.1311 of our Rules. Hudson's application, however, fails to include information as to the zoning of the proposed site and information on whether construction of the facilities has been a source of local controversy in its community.

8. Consequently, Hudson will be required to file within 30 days of the release of this Order an amended environmental narrative statement with the presiding Administrative Law Judge. In addition, copies shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

9. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.[7] However, since the

[1] SOQ Broadcasting has changed the call sign of its station from WSOQ to WEZG. In addition, SOQ filed a petition for leave to amend on June 3, 1983, providing the Commission with additional ownership information. Under § 1.65, good cause has been shown for the acceptance of the amendment. On December 30, 1983, SOQ filed another amendment concerning ownership information which failed to meet the requirements of § 73.3522 of the Rules. Under § 1.65, however, good cause has been shown for the acceptance of this amendment.

[2] Bell also filed an amendment regarding ownership information on February 11, 1982 which failed to meet the requirements of § 73.3522 of the Rules. Under § 1.65, good cause has been shown for the acceptance of this amendment.

[3] Lawrence filed an amendment on December 17, 1983 regarding the addition of supplemental engineering materials to its application, however, the amendment failed to meet the requirements of § 73.3522 of the Rules. Under § 1.65, however, good cause has been shown for the acceptance of this amendment.

[4] An amendment was filed in connection with this petition on November 9, 1982 in order to inform the Commission that the license of WOWO had been assigned from Westinghouse Broadcasting Company, Inc. to Wayne Broadcasting Corporation and that Wayne had been substituted as the petitioner herein.

[5] Where other factors, internal and/or external to the array warrant it, a hearing issue may be specified. Such circumstances, however, have not been established here.

[6] It should be noted that although the Bell proposal includes an environmental narrative statement, Commission study indicates that a grant of the application would not constitute a major action as defined by § 1.1305 of the Commission's Rules.

[7] Operation with the facilities specified herein is subject to modification suspension or termination without right to hearing if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2 Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries. Furthermore, the combined RSS of the granted proposals should not be more than 20 mV/m (NARBA standards) for reference purposes for protection of the mutually exclusive group: Brockville, Ottawa, and Montreal (Repentigny).

proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the porposals are for different communities, we will specify issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contigent comparative issue, should such an evaluation of the proposals prove warranted.

10. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the heights and locations of the antenna towers proposed by SOQ Broadcasting Corporation, Bell Broadcasting Company, Lawrence County Broadcasting Corporation, and Hudson Horizons, Inc.

(2) If a final environmental impact statement is issued with respect to the proposal of Hudson Horizons, Inc. which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules, and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

(3) To determine the areas and populations that would receive primary service from each proposal and the availability of other primary aural services to such areas and populations.

(4) To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals or combination of proposals would best provide a fair, efficient and equitable distribution of radio service.

(5) To determine in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

(6) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, That the Federal Aviation Administration is made party to these proceedings.

12. It is further ordered, That the petitions to dismiss and/or deny and the comments and contingent objections filed by Clear Channel Communications, Inc. are denied.

13. It is further ordered, That the petition to intervene and to deny filed by the Wayne Broadcasting Corporation is granted to the extent indicated herein and is denied in all other respects.

14. It is further ordered, That the petition for leave to amend filed by SOQ Broadcasting Corporation on June 3, 1983 is granted and the accompanying amendment, is accepted.

15. It is further ordered, That the amendment filed by SOQ Broadcasting Corporation on December 30, 1983, is accepted.

16. It is further ordered, That the amendment filed by Bell Broadcasting Company on February 11, 1982, is accepted.

17. It is further ordered, That the amendment filed by Lawrence County Broadcasting Corporation on December 17, 1983, is accepted.

18. It is further ordered, That § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Hudson Horizons, Inc. shall submit the amended environmental narrative statement, required by § 1.1311 of the Rules, to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

19. It is further ordered, That SOQ Broadcasting Corporation, Bell Broadcasting Company, and Lawrence County Broadcasting Corporation shall submit Section V–G for Antenna and Site Information of the application form (FCC Form 301) to the presiding Administrative Law Judge within 30 days of the release of this Order.

20. It is further ordered, That in the event that the Bell Broacasting Company application is granted, the construction permit shall contain the following condition:

An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degrees phase and 0.1 percent sample current ratio deviation shall be installed and continuously available to indicate the relative phase and magnitude of the sample currents of each element in the array to insure maintenance of the radiated fields within the standard pattern values of radiation. Upon receipt of operating specifications and before issuance of a license, the permittee shall submit the results of observations made daily of the base curents and their ratios, relative phases, sample currents and their ratios and sample current ratio deviations for each element of the array along with the final amplifier plate voltage and current, the common point current, and the field strengths at each monitoring point for both the nondirectional and directional daytime operations for a period of at least thirty days, to demonstrate that the array can be maintained within the specified tolerances. Licensee shall utilize monitoring point radials on true bearings from the site, as follows 215°, 329.5°, 175°, 165°, 240° and 225° true.

21. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–15148 Filed 6–5–84; 8:45 am]

BILLING CODE 6712–01–M

Midland Telecasting Company, Inc., et al.; Hearing Designation Order

In the matter of applications of Midland Telecasting Company, Inc., for Renewal of License of Station KDCD(TV), Channel 18, Midland, Texas MM Docket No. 84–542, File No. BRCT–710; Roger Weems and Rolando A. Romero, d/b/a West Texas Communications, for a Construction Permit for a New Commercial Television Station on Channel 18, Midland, Texas MM Docket No. 84–543, File No. BPCT–821201KR; Midland Telecasting Company, Inc. (Assignor) MM Docket No. 84–544, File No. BALCT–830817KE and Plains Television, Ltd. (Assignee) for Consent to the Assignment of License of Station KDCD(TV), Midland, Texas.

Adopted: May 24, 1984.

Released: June 7, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under conisderation: (1) The license renewal application, as supplemented, of Midland Telecasting Company, Inc. ("Midland") for commercial television Station KDCD(TV), Midland, Texas; (2)

the mutually-exclusive application of Rodger Weems and Rolando A. Romero, d/b/a West Texas Communications ("WTC") for a construction permit for a new commercial televison station on the channel presently occupied by KDCD(TV); and (3) an application for consent to the assignment of the KDCD(TV) license from Midland to Plains Television, Ltd. ("Plains"). Also before us is a petition to deny the KDCD(TV) license renewal application, filed on July 1, 1983, by WTC and Midland's "Answer to Petition to Deny." [1]

2. *Background.* On October 15, 1974 KDCD(TV) ceased broadcast operations because of financial difficulties and its then pending renewal application was placed on deferred status. Midland requested and was granted temporary authority to remain silent, which authority was subsequently extended, at Midland's request, for additional periods to afford it more time to resolve the financial problems and return the station to the air. By letter dated May 20, 1977, from the then Chief, Broadcast Bureau, Midland was advised that unless it could offer a firm and realistic plan to return KDCD(TV) to operating status, no further extention of authority to remain silent would be granted. In response, Midland stated that its financial difficulties were such that it could not offer a firm plan to return KDCD(TV) to the air at that time. However, the prospect of returning KDCD(TV) to the air improved when Midland sought to assign the station to a qualified buyer, Texas Community Broadcasting, Inc. ("TCB"). An application for assignment of license (BALCT–811215KG) was filed and granted. On February 26, 1982, the Commission granted the pending KDCD(TV) renewal application based on the condition that the assignment of Station KDCD(TV), Midland, Texas (BALCT–811215KG) "shall be consummated within sixty (60) days of the date of the grant and the Commission shall be notified of such consummation within one day thereafter; failure to meet this condition will render the grant of the renewal of license void and will cause the renewal application to revert to pending status." After receiving notification that the proposed assignment would not be consummated, on June 15, 1982, Midland was informed that the renewal application had been returned to deferred status. That letter also directed Midland to submit a statement of its plan to return the station to operational status. By amendment to its renewal application dated June 19, 1982, Midland informed us that, after the failure to consummate the assignment of the KDCD(TV) license to TCB, Midland had accepted the offer of another assignee, subject to Commission approval, and that the necessary agreements and application would be filed as quickly as possible.

3. By letter of October 20, 1982, Midland was informed that in view of the fact that KDCD(TV) has not resumed operation, the license was thereby considered forfeited and the call sign deleted. By letter of October 27, 1982, Midland requested that the license be reinstated as it had entered into a contract to assign the license and that the proposed assignee had agreed to place the station into operation within six months after consummation. That request was denied on December 16, 1982. On January 4, 1983, Midland filed a petition requesting reconsideration of the December 16, 1982, action denying reinstatement of the KDCD(TV) license and renewal application. That petition was based on alleged assurances given Midland on October 27, 1982, that if a contract to assign the license was filed within ten days, the KDCD(TV) license would be reinstated and, in reliance on those promises, such a contract was filed on or before November 8, 1982. It was alleged that the Commission's letter of December 16, 1982, refusing reinstatement, did not take those facts into account. No oppositions or objections were filed against Midland's petition for reconsideration. On May 2, 1983, the KDCD(TV) license was reinstated and the call sign restored after it was found that Midland had relied on those assurances made to it, did file a contract of sale within the time limit given and because those facts were not considered when the request for reinstatement was refused.

4. *The Petition to Deny.* On July 1, 1983, WTC filed a petition to deny the KDCD(TV) license renewal application which was reinstated in conjunction with the May 2, 1983, reinstatement of the station's license. WTC maintains that because the station has been silent since 1974 with no apparent likelihood that Midland will resume broadcast operations, the reinstated KDCD(TV) license renewal application should be denied and the WTC application for a new station on that channel be granted.

5. WTC's "petition," though directed to the license renewal application, is essentially a belated opposition to Midland's January 4, 1983, petition for reconsideration of the forfeiture of the KDCD(TV) license. The gravamen of WTC's allegations is that Midland should not be permitted to retain the license of a station that has gone dark. That question was resolved when the petition for reconsideration was granted and the license reinstated on May 2, 1983. At that time, it was clear that the KDCD(TV) renewal application would only be granted in conjunction with an assignment of license to a qualified buyer. The filing of the application to assign the KDCD(TV) license to Plains demonstrates that Midland seeks not to retain the station, but to comply with its representation to the Commission that it would assign the station to a qualified assignee who will return it to the air. The Commission has followed Midland's progress in this regard. WTC does not allege that Midland has acted improperly or otherwise in bad faith. Therefore, because Midland's pending license renewal application will only be granted in conjunction with the approval of the application for assignment of the KDCD(TV) license to Plains (see paragraph 7, *infra*), WTC's petition to deny will be denied.

6. *The Competing Applications.* The Midland renewal application and the WTC proposal are mutually exclusive in that they both seek authorization for use of the same freqency in Midland, Texas. Therefore, a hearing must be held to determine whether the KDCD(TV) license should be renewed for the purpose of assigning it to Plains or whether WTC should be authorized to use the frequency. In similar tripartite situations, we have held that the public interest would be served by comparing the qualifications of the proposed assignee and the new construction permit applicant. See *Cleveland Board of Education*, 87 FCC 2d 9 (1981); *Bronco Broadcasting Co., Inc.*, 50 FCC 2d 529

[1] On September 21, 1983, WTC filed a motion to dismiss the assignment application as inadvertently accepted for filing. It maintains that the cutoff date established by the Public Notice as the deadline for filing competing applications for a new station to operate on KDCD(TV)'s channel, as well as for filing petitions to deny and major amendments, precludes the filing of the assignment application viewed either as an application for a new station in competition with its own proposal or as a major amendment to a previously filed application. The WTC motion will be denied. An assignment application may be filed at any time and, because such an application does not propose a new station but merely the assignment of the license of an authorized facility, its filing is not in conflict with the WTC application. That application is included within this *Order*, as explained *infra*, only because it is the Commission's policy to compare a new applicant with the proposed assignee, not with the assignor. Further, major amendments are defined by § 73.3578 of the Commission's Rules and an assignment application is not an amendment under that rule.

(1974); *1400 Corp. (KBMI)*, 3 FCC 2d 571 (1966). In each of those cases, the station had been silent and those licensees had no plans to return to the air. Nevertheless, because no mutually exclusive applications for a construction permit had been filed, the Commission granted those renewal applications for the purpose of permitting a qualified buyer to purchase such a licensee's assets and become assignee. In fact, such was the case when the Commission approved the assignment of the KDCD(TV) license to TCB in 1982. However, though WTC's competing application in this case was filed before the application for assignment to Plains, Midland had previously proposed to assign the station to a qualified buyer in fulfillment of its representations made to the Commission. Thus, we are not presented with a situation in which a renewal applicant, faced with a mutually exclusive proposal, attempts to avoid a comparative hearing by substituting a prospective assignee to compete in its place. Consequently, we find that the most appropriate comparison under the current circumstances would be between Plains, as the proposed assignee of the license, and WTC, the applicant for a construction permit. If WTC prevails at hearing, it will be awarded a construction permit and the renewal application will be denied. If Plains prevails, the renewal and assignment applications will be granted subject to the conditions specified in paragraph 10, *infra*. Thus, Midland's renewal application will be held in abeyance pending resolution of the comparative hearing.

7. Except as indicated by the issues specified below, West Texas Communications and Plains Television, Ltd., are legally, financially, technically and otherwise qualified to operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.[2]

8. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications of West Texas Communications and Plains Television, Ltd. are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest; and

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

9. It is further ordered, that in the event of a grant of the Plains application, the grant of the assignment application shall contain the following conditions:

(1) That the assignment of license covered by BALCT–830817KE be consummated within sixty (60) days of the date of the grant, that the Commission be notified of such consummation within one day thereafter and that the station resume broadcasting within sixty (60) days after consummation.

(2) That ten days prior to the commencement of regular program operation, the assigne shall submit Section IIC of FCC Form 302, including equipment performance measurements made in accordance with § 73.1590 of the Commission's Rules.

10. It is further ordered, that, the petition to deny filed by West Texas Communications against the application of Midland Telecasting Co., Inc. is denied and its motion to dismiss the application for assignment of the KDCD(TV) license to Plains Television, Ltd. is denied.

11. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within twenty (2) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Service Division, Mass Media Bureau.

[FR Doc. 84–15149 Filed 6–5–84; 8:45 am]

BILLING CODE 6712–01–M

[2] We are also consolidating the nenewal application for the sole purpose of permitting action on that application in accordance with paragraph 7, *supra*.

New FM Stations; Applications for Consolidated Hearing; East Hampton Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. East Hampton Broadcasting Co., Inc., East Hampton, NY.	BPH–821028AP	84–524
B. Giraud Chester & Marjorie F. Chester d/b/a Chester Associates, East Hampton, NY.	BPH–830318AC	84–525
C. John F. Shea, III, East Hampton, NY.	BPH–830321AL	84–526

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, C
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C., 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–15142 Filed 6–5–84; 8:45 am]

BILLING CODE 6712–01–M

[File Nos. BPH-830222AG, et al.; MM Docket Nos. 84-555, et al.]

New FM Stations; Applications for Consolidated Hearing; Mountain Media, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Mountain Media, Inc., Bradford, PA.	BPH-830222AG	84-555
B. Donald J. Fredeen, Bradford, PA.	BPH-830707AE	84-556
C. BradComm, Inc., Bradford, PA.	BPH-830714BB	84-557

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearings Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative A, B, C,
2. Ultimate, A, B, C,

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-15144 Filed 6-5-84; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-830713AC; MM Docket Nos. 84-545, et al.]

New FM Stations; Applications for Consolidated Hearing; Outward Communicorp, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Guy Erway, Jr., Frisco, CO.	BPH-830713AC	84-545
B. Robert A. Bernstein, Frisco, CO.	BPH-830729AD	84-546
C. Outward Communicorp, Ltd., Frisco, CO.	BPH-831011AI	84-547
D. Timberline Broadcasting, Frisco, CO.	BPH-831027AF	84-548
E. Ann Perry Ogden, Frisco, CO.	BPH-831027AG	84-549
F. Aural Communications, Inc., Frisco, CO.	BPH-831027AH	84-550
G. Z-Comm Corp., Frisco, CO.	BPH-831027AN	84-551
H. Old Pioneer Broadcasting Corp., Frisco, CO.	BPH-831028AR	84-552

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B, C, and H
2. Comparative, All Applicants
3. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-15143 Filed 6-5-84; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-830502AO; et al.; MM Docket Nos. 84-527; et al.]

New FM Stations; Applications for Consolidated Hearing; Tift Area Radio, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Tift Area Radio, Inc., Nashville, GA.	BPH-830502AO	84-527
B. Country Communications, Inc., Nashville, GA.	BPH-830629AD	84-528
C. J. Morgan Dowdy et al, d/b/a Nashville Broadcasters, Nashville, GA.	BPH-830708AD	84-529
D. Lisa Chisolm, Nashville, GA.	BPH-830830AA	84-530

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), D
2. City Coverage, A, C
3. Comparative, A, B, C, D
4. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. If a final environmental statement is issued with respect to D (Chisolm) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether or not the proposal is consistent with the National Environmental Policy Act, as implemented by § 1301-1.1319 of the Commission's Rules; and

(b) Whether or not, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84-15145 Filed 6-5-84; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-830302AB and BPH-830713AP; MM Docket Nos. 84-553 and 84-554]

New FM Stations; Applications for Consolidated Hearing; Z Broadcasters, Inc., and Routt County Broadcasting Co.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Z Broadcasters, Inc., Hayden, CO.	BPH-830302AB	84-553
B. Routt County Broadcasting Co., Hayden, CO.	BPH-830713AP	84-554

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for heading in a consolidated proceeding upon issues whose hearings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applied to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-15146 Filed 6-5-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of nominations for membership on the Board's Consumer Advisory Council.

SUMMARY: The Board is asking the public to nominate qualified individuals for nine appointments to its Consumer Advisory Council. Nominations should include the name, address, and telephone number of the nominee, together with information about past and present positions held, and special knowledge, interests or experience related to consumer credit or other consumer financial services. It is contemplated that the Board will announce its selection of new members by year-end.

DATE: Nominations should be received by August 10, 1984.

ADDRESS: Nominations should be mailed to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Ann Marie Bray, Staff Assistant, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-2412.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established by the Congress in 1976 to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity .

Nine new members will be selected this year to replace members whose terms expire on December 31, 1984. The Board expects to announce its selection of new members by year-end. The Board is particularly interested in candidates who are familiar with issues in the area for consumer credit and other consumer financial services. In making the appointments, the Board also will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation.

The Council meets in Washington, D.C. three times a year. Council members are paid $100 per day for participating in the two-day meetings and for travel time. The Board also pays travel expenses.

Nominations should be submitted in writing to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and must be received no later than August 10, 1984. Nominations should include the name, address and telephone number of the nominee, past and present positions held, and special knowledge, interests or experience relating to consumer financial matters. This information will be made available for public inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

The names and affiliations of current Council members (and the expiration date of each term of office) are listed below:

Chairman

Willard P. Ogburn, Deputy Director, National Consumer Law Center, Boston, Massachusetts—December 31, 1984.

Vice Chairman

Timothy D. Marrinan, Assistant Vice President and Legal Counsel, First Bank System, Inc., Minneapolis, Minnesota—December 31, 1985.

Members

James G. Boyle, Public Utility Counsel, State of Texas, Austin, Texas—December 31, 1985.

Rachel G. Bratt, Assistant Professor, Department of Urban and Environmental Policy, Tufts University, Medford, Massachusetts—December 31, 1986.

Gerald R. Christensen, President and Chairman of the Board, First Federal Savings and Loan Association, Salt Lake City, Utah—December 31, 1984.

Thomas L. Clark, Jr., Deputy Superintendent of Banks, New York State Banking Department, New York, New York—December 31, 1985.

Jean A. Crockett, Professor of Finance, Wharton Graduate School, University of Pennsylvania, Philadelphia, Pennsylvania—December 31, 1985.

Meredith Fernstrom, Senior Vice President, Office of Public Responsibility, American Express Company, New York, New York—December 31, 1984.

Allen J. Fishbein, Director, Neighborhood Revitalization Project, Center for Community Change, Washington, D.C.—December 31, 1984.

E. C. A. Forsberg, Sr., President and Chief Executive Officer, Gulf Finance Corporation, Atlanta, Georgia—December 31, 1984.

Steven M. Geary, Associate General Counsel, Missouri Division of Finance, Jefferson City, Missouri—December 31, 1986.

Richard F. Halliburton, Deputy Director, Legal Aid of Western Missouri, Kansas City, Missouri—December 31, 1985.

Louise McCarren Herring, Manager, Communicating Arts Credit Union, Cincinnati, Ohio—December 31, 1986.

Charles C. Holt, Professor of Management, University of Texas at Austin, Austin, Texas—December 31, 1985.

Harry N. Jackson, Vice President, Credit, Dayton Hudson Corporation, Minneapolis, Minnesota—December 31, 1984.
Kenneth V. Larkin, San Rafael, California (former Executive Vice President of Bank of America N.T. and S.A., San Francisco, California)—December 31, 1985.
Frederick H. Miller, Professor of Law, University of Oklahoma, Norman, Oklahoma—December 31, 1986.
Margaret M. Murphy, Associate Professor and Director, Columbia Center, John Hopkins University, Columbia, Maryland—December 31, 1986.
Robert F. Murphy, President, General Motors Acceptance Corporation, Detroit, Michigan—December 31, 1986.
Lawrence S. Okinaga, Partner, Carlsmith, Carlsmith, Wichman & Case, Honolulu, Hawaii—December 31, 1986.
Elva Quijano, Vice President and Executive Professional Officer, Republic Bank of San Antonio, San Antonio, Texas—December 31, 1985.
Janet J. Rathe, Executive Committee Member, Oregon Consumer League, Portland, Oregon—December 31, 1984.
Janet M. Scacciotti, President and Chief Executive Officer, Guild Loan and Investment Company, Providence, Rhode Island—December 31, 1985.
Glenda G. Sloane, Director, Housing and Community Development, Center for National Policy Review, Catholic University School of Law, Washington, D.C.—December 31, 1985.
Henry J. Sommer, Supervising Attorney, Community Legal Services, Inc., Philadelphia, Pennsylvania—December 31, 1985.
Winne F. Taylor, Associate Professor of Law, Holland Law Center, University of Florida, Gainesville, Florida—December 31, 1985.
Clinton Warne, President, Consumers League of Ohio, Cleveland, Ohio—December 31, 1984.
Michael M. Van Buskirk, Assistant Vice President, Corporate Affairs, Banc One Corporation, Columbus, Ohio—December 31, 1985.
Frederick T. Weimer, General Assistant to the Vice President and General Credit Manager, Sears, Roebuck and Co., Chicago, Illinois—December 31, 1984.
Mervin Winston, President, Metropolitan Economic Development Association, Minneapolis, Minnesota—December 31, 1986.

Board of Governors of the Federal Reserve System, May 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 15102 Filed 6-5-84; 8:45 am]

BILLING CODE 6210-01-M

FSB Corp., et al.; Formations of; Acquisition by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications msut be received not later than June 28, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FSB Corp.*, College Corner, Ohio; to become a bank holding company by acquiring 80 percent or more of the voting shares of The Farmers State Bank (West College Corner, Indiana), College Corner, Ohio.

2. *Mineola Banshares, Inc.*, Mineola, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Mineola State Bank, Mineola, Iowa.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Breckinridge Bancorp, Inc.*, Cloverport, Kentucky; to become a bank holding company by acquiring at least 85.1 percent of the voting shares of Breckinridge Bank, Breckinridge, Kentucky.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Financial Corporation*, Wellington, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank, Wellington, Kansas.

2. *Herington First, Inc.*, Herington, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of First of Herington, Inc., Herington, Kansas and The First National Bank of Herington, Kansas.

3. *Interstate Financial Corporation*, Edmond, Oklahoma; to acquire at least 92.93 percent of the voting shares or assets of Union National Bank, Tulsa, Oklahoma.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Plainview Bancorp, Inc.*, Plainview, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Plainview Bancshares, Inc., Plainview, Texas and The City National Bank of Plainview, Plainview, Texas.

Board of Governors of the Federal Reserve System, May 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15103 Filed 6-5-84; 8:45 am]

BILLING CODE 6210-01-M

Herington First, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 28, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Herington First, Inc.*, Herington, Kansas; to acquire Peoples Insurance Agency, Inc., Sharon Springs, Kansas, and thereby to engage in the sale of general insurance in a community with a population of less than 5,000. This activity is to be conducted in the city of Herington, Kansas, and the surrounding rural area.

Board of Governors of the Federal Reserve System, May 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15104 Filed 6-5-84; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp.; Application to Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board Policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 26, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd St., Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to engage *de novo* through NCNB National Bank of Virginia, Richmond, Virginia in the activities of making loans to individuals for personal, family, household, or charitable purposes; deposit taking, including checking, savings and time deposits. These activities are to be conducted in Richmond, Virginia, and the surrounding area.

Board of Governors of the Federal Reserve System, May 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15105 Filed 6-5-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84C-0135]

Ciba Vision Care; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Vision Care has filed a petition proposing that the color additive regulations be amended to provide for the safe use of polymers containing Reactive Blue No. 19 in coloring contact lenses.

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 706(b)(1), 74 Stat. 399-402 as amended (21 U.S.C. 376(b)(1))), notice is given that a petition (CAP 4C0183) has been filed by Ciba Vision Care, P.O. Box 105069, Atlanta, GA 30348, proposing that Part 73 (21 CFR Part 73) be amended to provide for the safe use of 2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-((2-(sulfooxy) ethyl)sulfonyl)phenyl)amino)-, disodium salt (Reactive Blue No. 19) (CAS Reg. No. 2580-78-1) chemically bonded to the lens polymer (polyhydroxyethyl methacrylate), to produce permanently tinted contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 29, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-15098 Filed 6-5-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0151]

Interstab Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Adminstration (FDA) is announcing that Interstab Chemicals, Inc., has filed a petition proposing to amend the food additive regulations to provide for the safe use of bis(beta-carbobutoxyethyl)tin bis(isooctylmercaptoacetate) and beta-carbobutoxyethyltin tris(isooctylmercaptoacetate) as stabilizers for polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3776) has been filed by Interstab Chemicals, Inc., 500 New

Jersey Ave., New Brunswick, NJ 08903, proposing that § 178.2650 *Octyltin stabilizers in vinyl chloride plastics* (21 CFR 178.2650) be amended to provide for the safe use of bis(beta-carbobutoxyethyl)tin bis(isooctylmercaptoacetate) and beta-carbobutoxyethyltin tris(isooctylmercaptoacetate) as stabilizers for polyvinyl chloride (PVC) and vinyl chloride copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 25, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-15100 Filed 6-5-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0154]

Open Meeting; Public Workshop on Cell Substrates; Availability of Points to Consider; Request for Comments

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming 2-day public workshop to discuss the use of abnormal mammalian cells in the production of various types of biological products, including those derived from recombinant deoxyribonucleic acid (DNA) technology and hybridoma technology. FDA also is announcing the availability of, and requesting comments on, a document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals." The document was prepared by FDA's Center for Drugs and Biologics.

DATES: The workshop will be held on July 30 and 31, 1984, from 8:30 a.m. to 5 p.m.

ADDRESSES: The workshop will be held at Jack Masur Auditorium, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. Interested persons may submit requests for a copy of the agenda or suggestions on the agenda to Mary Ann Tourault, Center for Drugs and Biologics, Food and Drug Administration (HFN-830), 8800 Rockville Pike, Bethesda, MD 20205. Single copies of the points to consider document are available from the dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary Ann Tourault, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-5241.

SUPPLEMENTARY INFORMATION: On July 30 and 31, 1984, FDA will cosponsor a workshop on use of new cell subtrates. Other cosponsors include the National Cancer Institute; the National Institute of Allergy and Infectious Diseases; the National Heart, Lung, and Blood Institute of the National Institutes of Health, and the Centers for Disease Control. The workshop is being held to discuss the use of abnormal mammalian cells in the production of various types of biological products, including cell substrates derived from recombinant DNA technology and monoclonal antibody technology. FDA will use the information provided during this workshop to develop plans for further scientific and regulatory activities. Persons planning to attend should contact Mary Ann Tourault (address above) to obtain additional information.

In conjunction with this workshop, FDA also is announcing the availability of a document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals." Human diploid cell lines have been used for many years to produce certain viral vaccines. The karyologically defined diploid cell lines now being used for in vitro propagation of viruses can be subcultivated for a limited number of population doublings. In contrast, continous nondiploid (abnormal) cell lines can be subcultivated for an infinite number of population doublings. Continuous nondiploid cell lines used in new technologies, such as recombinant DNA technology and monoclonal antibody technology, currently are being investigated as sources for manufacturing a variety of biological products. However, using these abnormal cell lines presents unique quality control and safety issues. FDA must thoroughly consider and resolve all issues before it approves a license for any biological product made from abnormal cell lines. FDA is making available its points to consider document to assist manufacturers in developing and submitting applications to FDA for investigational new drugs made from abnormal cell lines. FDA's points to consider document includes suggested procedures for obtaining karyology data, testing for microbial agents, and testing for tumorigenicity.

FDA requests comments, data, and recommendations on the document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals." FDA may develop these points to consider into a guideline to be made available under 21 CFR 10.90(b)(1) or into regulations, to ensure the safety, purity, potency, and effectiveness of any licensed biological product prepared from cell lines.

Interested persons may submit written comments on the points to consider document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen at the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 29, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-15095 Filed 6-5-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81C-0177]

Richardson-Vicks, Inc.; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of the petition (CAP 0C0154) proposing that the color additive regulations be amended to provide for the safe use of FD&C Red No. 4 in coloring cosmetics and drugs intended for external use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 706(d), 74 Stat. 402-403 (21 U.S.C. 376(d))), the following notice is issued:

In accordance with § 71.6 *Extension of time for studying petition; substantive amendments; withdrawal of petition without prejudice* of the procedural

color additive regulations (21 CFR 71.6), Richardson-Vicks, Inc., One Far Mill Crossing, Shelton, CT 06484 (formerly Richardson-Merrell, Inc., New Rochelle, NY 10801), has withdrawn its petition (CAP 0C0154), notice of which was published in the Federal Register of June 30, 1981 (46 FR 33637), proposing that the color additive regulations be amended to provide for the safe use of FD&C Red No. 4 in coloring cosmetics and drugs intended for external use in the area of the eye.

Dated: May 29, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-15099 Filed 6-5-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79N-0141]

Scientific Literature Update on Sucrose and Corn Sugars; Opportunity for Public Review

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public review of its compilation of recently published scientific literature on corn sugars and sucrose and is soliciting from the public copies of relevant published studies and other information not included in the agency's compilation. Relevant articles from this scientific literature update and articles and other data submitted in response to this notice will be considered in the agency's decision on the generally recognized as safe (GRAS) status of corn sugar, corn syrup, invert sugar, and sucrose.

DATE: The agency requests that any submissions be sent to FDA before August 30, 1984. However, highly relevant articles and other data on the safety of the ingredients will be accepted and considered throughout the review process.

ADDRESS: Published articles, other relevant data, information, and requests for a single copy of the bibliographic listing for the scientific literature compilation may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 30, 1982, FDA proposed to affirm the GRAS status of corn sugar, corn syrup, and invert sugar (47 FR 53917) and sucrose (47 FR 53923) as direct human food ingredients. The agency recognized when it issued the proposals that its safety evaluation was based on published scientific data compiled up to 1976, and that an update of the safety data on these ingredients from published scientific literature would be necessary before the issuance of the final rules. The agency is now in the process of conducting that update through the use of machine searches of the published scientific literature. Various sources are being surveyed including Medline, Toxline, Cancerline, Biological Abstracts, Food and Science and Technology Abstracts, and others. The agency will consider the articles found during this literature update along with the original review conducted by the Federation of American Societies for Experimental Biology and comments on the November 30, 1982 proposals in reaching a final conclusion on the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose.

FDA is issuing this notice to provide an opportunity for all interested persons to review the compilation of the scientific literature that is being considered by the agency. FDA also is soliciting copies of relevant articles not included in its compilation and is providing an opportunity for the submission of other relevant safety data. The agency will consider relevant articles from this scientific literature update and articles and other data submitted in response to this notice in formulating final rules on the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose.

The compilation, which consists of a bibliographic listing of all of the articles under consideration by the agency, is on file at the Dockets Management Branch (address above) for public examination between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of the bibliographic listing for the scientific literature compilation, identified with the docket number found in brackets in the heading of this document, should be submitted in writing to the Dockets Management Branch (address above). A second updated compilation of scientific literature will be placed on file at the Dockets Management Branch by August 30, 1984.

Interested persons may submit to the Dockets Management Branch (address above) published articles and other relevant data and information for consideration by the agency. Two copies of any submissions are to be submitted, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Received submissions and other data and information may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 30, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-15096 Filed 6-5-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Intent To Amend the White River Resource Area, Management Framework Plan and the Kremmling Resource Area, Resource Management Plan; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Amendment to White River Resource Area, Management Framework Plan and Kremmling Resource Area, Resource Management Plan.

SUMMARY: In accordance with 43 CFR Part 1600 and Pub. L. 94-579, section 603, the Bureau of Land Management, Craig District, Colorado, is beginning the process of amending the White River Resource Area, Management Framework Plan (MFP) and the Kremmling Resource Area, Resource Management Plan (RMP). The purpose of the amendments is to determine if the areas listed below are acceptable for coal development. The identified areas are included within Coal Preference Right Lease Applications. The effects of designating the areas as acceptable or unacceptable for coal development is being assessed in the Northwest Colorado Preference Right Lease Application Environmental Impact Statement.

DATE: The scoping period runs for 30 days from the date of this notice. Written comments must be submitted within this 30-day period.

ADDRESS: Comments should be addressed to B. Curtis Smith, Area Manager, Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, Colorado, 81641.

SUPPLEMENTARY INFORMATION: Following is a legal description of the study areas:

Sixth Principal Meridian

T. 3 N., R. 102 W.,
Sec. 22, All.
T. 2 N., R. 92 W.,
Sec. 31, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 32, W½NW¼, NW¼SW¼.
T. 7 N., R. 81 W.,
Sec. 22, S½;
Sec. 27, E½NE¼, NW¼NE¼.

Issues to be addressed in the plan amendments include wildlife, threatened or endangered species, floodplains, and alluvial valley floors. Planning criteria will involve Application of the Unsuitability Criteria (43 CFR Part 3461) and an Analysis of Multiple Use Decisions.

The plan amendments are being prepared through the use of an interdisciplinary team with experience and knowledge in the following areas: Lands, minerals, hydrology, soils, wildlife, recreation, cultural resources, visual resources, and vegetation.

The scoping process will consist of a 30-day written comment period. A written comment period will also be held on the Draft Environmental Impact Statement (DEIS). Public meetings will be held on the DEIS if there is sufficient demand.

Through these steps, BLM will complete required land use planning and environmental analysis in order to ensure timely processing of three Coal Preference Right Lease Applications. Documents relevant to this planning effort are located in the following offices:

White River MFP: Bureau of Land Management, White River Resource Area Office, P.O. Box 928, Meeker, Colorado 81641
Kremmling RMP: Bureau of Land Management, Kremmling Resource Area Office, P.O. Box 68, Kremmling, Colorado 80459

For further information contact: Bill Hill, Team Leader, White River Resource Area, at the address given above. (303) 878–3601.

Dated: May 24, 1984.

Wright C. Sheldon,

Acting State Director, Colorado.

[FR Doc. 84–15110 Filed 5–5–84; 8:45 am]

BILLING CODE 4310–JB–M

Colorado; Filing of Plat Survey

May 29, 1984.

The plat of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., July 23, 1984.

The plant representing the dependent resurvey of a portion of the subdivisional lines, M.S. No. 3255, Dolores No. 4 Placer and M.S. No. 3256, Dolores No. 5 Placer; the survey of a portion of the subdivisional lines and subdivision of sections 14 and 15, T. 51 N., R. 19 W., New Mexico Principal Meridian, Colorado, Group No. 747, was accepted May 23, 1984.

This survey was executed to meet certain adminstrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037—20th Street, Denver, Colorado, 80202.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 84–15113 Filed 6–5–84; 8:45 am]

BILLING CODE 4310–84–M

[OR 21766 (WASH), OR 21767 (WASH), OR 21768 (WASH), OR 21783 (WASH), OR 21785 (WASH), OR 22060 (WASH), OR 22061 (WASH), OR 22062 (WASH), OR 22064 (WASH), OR 22066 (WASH), OR 22133 (WASH), OR 22149 (WASH), OR 22250 (WASH)]

Washington; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that thirteen land withdrawals for the Columbia Basin Reclamation Project continue for an indefinite period. The land(s) would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Orders of April 26, 1937, December 21, 19843, December 26, 1913, November 19, 1904, May 4, 1934, May 11, 1934, April 2, 1942, May 23, 1945, June 26, 1940, and June 27, 1941 and Bureau of Land Management Orders of June 18, 1947, January 16, 1947, and September 16, 1953, be continued in their entirety or in part for an indefinite period pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved are located in Douglas, Lincoln, Grant, Adams and Franklin Counties and aggregate 75,845.65 acres in the State of Washington.

The purpose of the withdrawals is to protect the Columbia Basin Reclamation Project. The withdrawals segregate the land(s) from operation of the public land laws generally, inlcuding the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: May 29, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–15124 Filed 6–5–84; 8:45 am]

BILLING CODE 4310–33–M

[M–59827(SD), M–59832(SD), M–59833(SD), M–59835)]

Realty Action; Competitive Sales of Public Land in Jackson County, South Dakota

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area Office.

ACTION: Notice of Realty Action M–59827(SD); M–59832(SD); M–59833(SD); and M–59835(SD); Competitive Sales of Public Land in Jackson County, South Dakota.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 at no less than fair market value:

Black Hills Meridian

M–59827(SD) Appraised Value $6,000.00
T. 3 S., R. 22 E., Section 12: E½NE¼ containing 80.00 acres

M–59832(SD) Appraised Value $750.00
T. 3 S., R. 23 E., Section 9: Lot 5 containing 18.10 acres
M–59833(SD) Appraised Value $790.00
T. 3 S., R. 24 E., Section 11: Lot 1 containing 9.30 acres
M–59835(SD) Appraised Value $6,000.00
T. 2 S., R. 24 E., Section 25: S½SE¼ containing 80.00 acres

The land will be offered for sale by sealed bid only utilizing competitive bidding procedures on August 8, 1984 at 1:30 p.m. MDT, at Montana State Office Bureau of Land Management, 222 North 32nd Street, P.O. Box 31434, Billings, Montana 59107–1434.

*M–59827(SD)**

This land parcel is located approximately 5½ miles southeast of Kadoka, South Dakota, in Jackson County. These lands are within one mile of the White River with the land being rolling grasslands.

M–59832(SD)

This land parcel is approximately 3½ miles southeast of Belvidere, south Dakota, in Jackson County. The parcel is along the White River and is covered with cottonwood trees.

M–59833(SD)

This land parcel is located approximately 5½ miles southwest of Belvidere, South Dakota, in Jackson County. The parcel is along the White River with some being rolling grasslands with shale slide banks near the river.

*M–59835(SD) **

This land parcel is located approximately four miles east of Belvidere, South Dakota, in Jackson County. The parcel is two mile from the While River with the land being rolling grasslands.

All of the above parcels have section line access, but are being offered for sale because they are isolated from other blocks of public land and are difficult and uneconomical to manage.

The proposed sale is consistent with the Bureau's planning system and Jackson County government officials have been notified of the sale. The transfer of the tract into private ownership will benefit the public interest and provide for better land management.

Terms and Conditions

The terms and conditions applicable to this sale are as follows:

1. All minerals will be reserved to the United States, together with the right to explore, prospect for, mine, and remove same under applicable law and regulations;

2. A right-of-way for ditches or canals will be reserved to the United Staes in accordance with 43 U.S.C. 945;

3. The sale of these lands will be subject to all valid existing rights and reservations of record;

4. Access for this parcel must be in compliance with County and State regulations.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City Montana 59301. Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including environmental assessment, and the record of public discussions is available for review at the a Miles City District Office, Miles City, Montana, or the South Dakota Resource Area Office, Belle Fourche, South Dakota 57717.

SUPPLEMENTARY INFORMATION:

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value of $6,000 for M–59827(SD), $750 for M–59832(SD), $790 for M–59833(SD), $6,000 for M–59835(SD). Bids must be individually submitted for each parcel in this notice.

Method of Bidding: The land will be sold by sealed bid only. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of the Interior, Bureau of Land Management for not less than one-fifth (20%) of the amount bid.

Sealed bids will be received at the Montana State Office, Bureau of Land Management, until 1 p.m. MDT, August 8, 1984. Sealed bids will be opened in the Montana State Office, 222 North 32nd Street, Billings, Montana.

The sealed bid envelope must be addressed as follows:

Cashier—Sealed Bids, Public Land Sale M——, P.O. Box 31434, Billings, Montana 59107–1434

Modified Bidding: For a period of 30 days following the date of the sale, John Dunn of Woodward, Oklahoma, the designated bidder on M–59827, and Donald Perault of Belvidere, South Dakota, the designated bidder or M–59835, will be offered the right to meet the highest qualifying bid on those two respective tracts. The designated bidder must submit a bid of at least the fair market value prior to the sale date to be considered under the modified bidding provisions. If the respective designated bidder meets the high bid on that tract (M–59827 or M–59835), the respective land will be sold to the designated bidder and the high bid will be returned. Refusal by the designated bidder to meet the high bid or to subnmit any bid at all prior to the sale date shall constitute a waiver of such bidding provisions.

Competitive Bidding

If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying bid shall then be publicly declared.

Sale Continuation: In the event these parcels are not sold at the initial sale offering, the parcels will then be available for sale over the counter on a first come, first served basis, at the Montana State Office, Bureau of Land Management, 222 North 32nd Street, Billings, Montana.

Final Details: Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price within the time period designated by the authorized officer. Failure to submit the required amount within the allotted time will result in cancellation of the sale and the deposit will be forfeited. All bids will be either returned, accepted or rejected within 60 days of the sale date.

Dated: May 29, 1984.

Robert A. Teegarden,

Acting District Manager.

[FR Doc. 84–15175 Filed 6–5–84; 8:45 am]

BILLING CODE 4310–84–M

* These parcels will be sold by modified competitive bidding, allowing the present leassee preference to match the high bid.

Fish and Wildlife Service

Management of Charles M. Russell National Wildlife Refuge; Availability of Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: This notice announces the Fish and Wildlife Service's intention to extend the review and comment period of the Draft Environmental Impact Statement (DEIS) to implement the master plan for the operation of the Charles M. Russell National Wildlife Refuge.

DATE: The review and comment period is extended to August 15, 1984.

ADDRESS: Written comments should be sent to Galen Buterbaugh, Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Fries, Refuge Manager, Charles M. Russell National Wildlife Refuge, P.O. Box 110, Lewistown, Montana 59457, telephone: 406/538–8706. Individuals wanting copies of this DEIS for review should immediately contact either Mr. Fries or the Denver Regional Office (address above). Copies have been sent to all agencies and individuals who participated in the preparation of and/or commented on the earlier EIS.

SUPPLEMENTARY INFORMATION: On March 29, 1984, the U.S. Fish and Wildlife Service printed a notice in the Federal Register (Vol. 49, November 56), advising the public of the availability of a new DEIS regarding management of the Charles M. Russell National Wildlife Refuge, Montana. A suggested review and comment period of 60 days or until May 21, 1984, was proposed..

The Service has received a number of requests for extension of the review and comment period, and hereby publishes notice extending the review and comment period until August 15, 1984.

Dated: May 25, 1984.

William E. Martin,

Acting Regional Director.

[FR Doc. 84–15112 Filed 6–5–84; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the West Delta Block 73, G–35, A, Federal Unit Agreement No. 14–08–0001–8915, submitted on May 18, 1984, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the West Delta Block 73, G–35, A, Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 31, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–15178 Filed 6–5–84; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the West Delta Block 73, F–35, A, Federal Unit Agreement No. 14–08–0001–11680, submitted on May 18, 1984, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the West Delta Block 73, F–35, A, Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 7002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (5.04) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 30, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–15179 Filed 6–5–84; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–165]

Certain Alkaline Batteries; Extension of Deadline for Filing Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has extended the deadline for filing the administrative law judge's (ALJ's) initial determination (ID) on violation of section 337 in the above-captioned investigation from June 21 to July 10, 1984.

Authority: 19 U.S.C. 1337, 19 C.F.R. 201.4(b) and 210.53(a).

SUPPLEMENTARY INFORMATION: On May 24, 1984, the Chairman received a letter from the ALJ requesting an extension of the deadline by which the ID in the above-captioned case must be filed with the Commission. An extension was requested because of the increased number of section 337 investigations and

the recent relocation of the Office of Administrative Law Judges to new quarters.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0499.

By order of the Commission.

Issued: June 1, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–15220 Filed 6–5–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–195]

Certain Cloisonne Jewelry; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 26, 1984, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on behalf of Laurel Burch, Inc., 410 Townsend Street, Suite 231, San Francisco, California 94107. The complaint alleges unfair methods of competition and unfair acts in the importation of certain cloisonne jewelry into the United States, or in its sale, by reason of alleged (1) infringement of U.S. Copyright Reg. Nos. VA 108–466, VA 108–465, VA 107–361, VA 105–485, VA 116–449, VA 137–741, VA 137–743, VA 116–448, VA 137–749, VA 137–758, VA 116–451, VA 137–748, VA 137–747, VA 116–447, VA 137–757, VA 137–744, VA 137–755, VA 137–740, and VA 116–450; and (2) passing off. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on May 25, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain cloisonne jewelry into the United States, or in its sale, by reason of alleged (1) infringement of U.S. Copyright Reg. Nos. VA 108–466, VA 108–465, VA 107–361, VA 105–485, VA 116–449, VA 137–741, VA 137–743, VA 116–448, VA 137–749, VA 137–758, VA 116–451, VA 137–748, VA 137–747, VA 116–447, VA 137–757, VA 137–744, VA 137–755, VA 137–740, and VA 116–450; and (2) passing off, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Laurel Burch, Inc., 410 Townsend Street, Suite 231, San Francisco, California 94107

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Chen Wei Handicraft Co., Ltd., 64 Sung Chiang Road, Pan Chaio City, Taipei, Taiwan

Ching Sheng Co., Ltd., 10 Alley, 32 Lane, 245 Chung Ching Road, Pan Chiao City, Taipei, Taiwan

Chen Will Handicraft Co., Ltd., 346 Yuan Shan Road, Chung Ho City, Taipei, Taiwan

National Quality Co., Ltd., 9th Floor, No. 140, Chien Kuo N. Road, Taipei, Taiwan

Giocoso Products Co., Ltd., Miramar Mansion, 683–1 Min Tsu East Road, Taipei, Taiwan

Humber Pacific, Suite 201, 367 Water Street, Vancouver, British Columbia, Canada

Perfect Pearl Company, 8121 Central Park Avenue, Skokie, Illinois 60071

Perfect Pearl Company, 104 West 29th Street, New York, New York 10001

Diamond Sales, The Card Gallery, P.O. Box 17–446, West Hartford, Connecticut 06117

Mr. Daniel Vianale, 401 5th Avenue, New York, New York 10016

Il Hwa, 401 5th Avenue, New York, New York 10016

Mr. David Rasniek, 3203 Overland Avenue, No. 7149, Los Angeles, California 90034

Far Eastern Traders, P.O. Box 3293, New York, New York 10185

The Answer Ltd., London Square Mall, Eau Claire, Wisconsin 54701

(c) Deborah S. Strauss, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: Deborah S. Strauss, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–1233.

By order of the Commission.

Issued: May 31, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–15219 Filed 6–5–84; 8:45 am]

BILLING CODE 7020–02–M

Drycleaning Machinery From West Germany; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. AA1921–99, Drycleaning Machinery from West Germany.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist which warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. AA1921–99 regarding drycleaning machinery from West Germany. The purpose of the proposed section 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, would be threatened with material injury, or the establishment of an industry would be materially retarded, by reason of imports of drycleaning machinery from West Germany if the antidumping order is modified or revoked with respect to such merchandise, provided for in item 670.41 of the Tariff Schedules of the United States.

SUPPLEMENTARY INFORMATION: On September 29, 1972, the Commission determined that an industry in the United States was injured within the meaning of the Antidumping Act of 1921, by reason of imports of drycleaning machinery from West Germany determined by the Secretary of Treasury to be sold or likely to be sold at less than fair value (LTFV).

On November 8, 1972, the Department of the Treasury issued a finding of dumping (T.D. 72–311) and published notice of the dumping finding in the **Federal Register** (37 FR 23715).

On October 28, 1981, the Commission received a request to review its affirmative determination in investigation No. AA1921–99. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by Barnes, Richardson & Colburn on behalf of Boewe Machinenfabrik, GmbH, a West German exporter of drycleaning machinery, and American Permac, Inc., a related U.S. importer of such merchandise. On February 10, 1982, the Commission issued a notice of dismissal of the request to institute a section 751(b) review investigation concerning the affirmative determination in investigation No. AA1921–99, Drycleaning Machinery from West Germany (47 FR 6119).

On May 18, 1984, the Commission received another request to review its affirmative determination in investigation No. AA1921–99. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by Barnes, Richardson & Colburn on behalf of Boewe Machinenfabrik, GmbH, a West German exporter of drycleaning machinery, and American Permac, Inc., and Bowe Systems & Machinery, Inc., both of which are related U.S. importers and sellers of such merchandise.

Written Comments Requested

Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests public comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: (1) Imports of the subject merchandise from West Germany have declined absolutely and in relation to imports from other sources for reasons unassociated with the dumping order; (2) A former major West German supplier has reportedly become a U.S. producer of drycleaning machines and is also an importer of Italian machines; (3) U.S. demand for drycleaning machinery has increased significantly and is projected to remain strong; (4) In 1983, Boewe introduced a new generation of "Flex" drycleaning machines in the U.S. market; and (5) The U.S. sales price of imports from West German is substantially higher than the price of comparable U.S. products and imports from other countries.

Additional Information

Under § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), the signed original and 14 true copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Such request should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Cofidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other public documents in this matter are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth, Office of Investigations, U.S. International Trade Commission (202–523–0289).

Issued: June 1, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–15221 Filed 6–5–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–162]

Certain Cardiac Pacemakers and Components Thereof; Commission Decision Not to Review Initial Determination Joining Biotronik GmbH & Co. and Biotronik Sales, Inc. as Respondents

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) (Order No. 43) to join Biotronik GmbH & Co. and Biotronik Sales, Inc. (Biotronik) as respondents in the above-captioned investigation.

SUPPLEMENTARY INFORMATION: On March 28, 1984, the respondents moved (Motion No. 162–56) to amend the complaint and notice of investigation to join Biotronik as respondents in the above-captioned investigation. On April 27, 1984, the presiding officer issued an ID granting the motion.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Office of the General Counsel, telphone 202–523–0493.

Authority: 19 U.S.C. 1337; 19 CFR 210.53(c) and (h).

Issued: May 29, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–15216 Filed 6–5–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–145]

Certain Rotary Wheel Printers; Commission Decision Not to Review Initial Determinational Terminating Respondents

AGENCY: Internation Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to

review an initial determination (I.D.) granting complainant Qume Corporation's (Qume's) motion to withdraw its complaint with respect to respondents C. Itoh & Co., Ltd. (C. Itoh), and C. Itoh Electronics, Inc. (CIE), because the conditions which formed the basis for naming those firms as respondents no longer exist. This action has the effect of terminating the investigation as to C. Itoh and CIE.

SUPPLEMENTARY INFORMATION: No petitions for review or agency or public comments were received.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1693.

Authority: 19 U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983 (to be codified at 19 CFR 210.53(c) and (h)).

Issued: May 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–15217 Filed 6–5–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–174]

Certain Woodworking Machines; Commission Determination Not to Review Initial Determination Substituting Complainants

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination ("ID") granting complaint's motion to amend the complaint and notice of investigation.

SUPPLEMENTARY INFORMATION: On April 16, 1984, complainant Rockwell International Corp. ("Rockwell") filed a motion to amend the complaint and notice of investigation (Motion No. 174–23) to substitute Delta International Machinery Corporation for the present complainant Rockwell.

On May 9, 1984, the presiding officer issued an ID granting the Rockwell motion (Order No. 16). The Commission received no petitions for review of the ID or comments from any government agency.

FOR FURTHER INFORMATION CONTACT: Hannelore V. M. Hasl, Esq., Office of the General Counsel, telephone 202–523–0375

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (c) and (h).

Issued: May 31, 1984.

By order of the Commission.

Keneth R. Mason,

Secretary.

[FR Doc. 84–15218 Filed 6–5–84; 8:45 am]

BILLING CODE 7020–02–M

[332–162]

Import Investigations; Foreign Industrial Targeting and Its Effects on U.S. Industries; Phase III, Brazil, Canada, Korea, Mexico, and Taiwan

AGENCY: International Trade Commission.

ACTION: This notice announces the start of the third phase of the Commission's investigation of foreign industrial targeting, investigation 332–162, and informs the public of the schedule of that phase, including the scheduling of a public hearing.

EFFECTIVE DATE: May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. John Suomela, Director, Office of Economics (202) 523–3771 or Paul Golding (202) 523–1542.

SUPPLEMENTARY INFORMATION: The Commission instituted the present investigation on its own motion under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on April 19, 1983, at the request of the Subcommittee on Trade of the House Committee on Ways and Means. Notice of institution of the investigation and the schedule of the first phase of the investigation which concerned industrial targeting by Japan was published in the Federal Register of May 11, 1983 (48 FR 21210). Notice of institution of the investigation and the schedule of the second phase of the investigation which concerned industrial targeting by the European Community and member states was published in the **Federal Register** of October 26, 1983 (48 FR 49559).

In the original notice of investigation, it was announced that the investigation would be divided into three phases: the first to consider Japanese industrial targeting, the second to consider the European Community's industrial targeting, and the third to consider industrial targeting by other major U.S. trading partners—Brazil, Canada, Korea, Mexico, and Taiwan.

Phase III will attempt to answer the following questions about the specific countries' industrial targeting: (1) Which industries have these countries targeted? (2) What specific practices have these countries used to further the international competitiveness of these industries? (3) What have been effects of these practices on the competitiveness of the countries and their U.S. competitors?

The report of phase III findings will be submitted to the Subcommittee on Trade no later than January 9, 1985.

Public Hearing

A public hearing in connection with the third phase of this investigation will be held in the Commission Hearing Room, 701 E Street N.W., Washington, D.C., 20436, beginning at 10 a.m. on September 11, 1984. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street N.W., Washington, D.C. 20436, no later than noon, September 4, 1984.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation by September 4, 1984. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except of confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest possible date, but no later than October 10, 1984. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: May 29, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–15215 Filed 6–5–84; 8:45 am]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted To the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 6, No. 4).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the fourth calendar quarter of 1983. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there was one abnormal occurrence at the nuclear power plants licensed by the NRC to operate. The item involved generic problems pertaining to a specific manufacturer's emergency diesel generators. There was one abnormal occurrence for the other NRC licensees. The item involved an overexposure of a radiographer. There was one abnormal occurrence reported by an Agreement State. The item involved an overexposure to a radiographer.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG–0090, Vol. 6, No. 4 (or any of the previous reports in this series), may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, Master Card, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC this 5th day of June 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84–15193 Filed 6–5–84; 8:45 am]

BILLING CODE 7590–01–M

Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, The Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 31st day of May 1984 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of Internal Programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received and application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Mitsubishi Internatl. Corp., May 3, 1984, May 9, 1984, XSNM02147.	3.65 percent	38,146.00	1,393.000	Reload fuel for Takahama Unit 3	Japan.
Mitsui & Co., (U.S.A.), Inc., May 9, 1984, May 11, 1984, XSNM02148.	3.95 percent	18,118.000	540.000	Reload fuel for Fukushima II, Unit 3	Japan.
Transnuclear, Inc., May 17, 1984, May 17, 1984, XU08597.	(1)			For experimental testing in a calorimeter for general physics studies.	Switzerland.
Mitsui & Co., (U.S.A.), Inc., May 18, 1984, May 23, 1984, XSNM02149.	3.95 percent	40,637	1,234	Reload fuel for Fukushima II, Unit 3	Japan.

[1] 10,000 kgs depleted uranium

[FR Doc. 84–15194 Filed 6–5–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-400, 50-401; ASLBP No. 82-472-03-OL]

Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency, Sheraton Harris Nuclear Plant Units 1 and 2; Order

May 31, 1984.

Time and Place for Evidentiary Hearing

The evidentiary hearing on environmental issues will begin on June 14, 1984 in Raleigh, North Carolina at the following address: Room 225, Federal Court Building, 310 New Bern Avenue.

On June 15, 18 and 19, 1984, the hearing will continue at the following address: U.S. Bankruptcy Courtroom, Century Station Post Office, 300 Fayetteville Street Mall, Room 208, Raleigh, North Carolina.

If necessary, the hearing will conclude on June 20, 1984 in Room 225, Federal Court Building, address as above.

Unless the Board establishes other times, the hearing will begin each day at 9:00 a.m. and adjourn at 5:30 p.m.

Dated at Bethesda, Md., May 31, 1984.

For the Atomic Safety and Licensing Board.

James L. Kelley,

Chairman, Administrative Judge.

[FR Doc. 84-15195 Filed 6-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409, License No. DPR-45, EA 83-61]

Dairyland Power Cooperative, LaCrosse Boiling Water Reactor; Order Imposing Civil Monetary Penalty

I

Dairyland Power Cooperative (the "licensee") is the holder of Operating License No. DPR-45 (the "license") issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes the operation of the LaCrosse Boiling Water Reactor in Genoa, Wisconsin. This license was issued on August 28, 1973.

II

As a result of a special inspection of the licensee's facilities by the Nuclear Regulatory Commission's Office of Inspection and Enforcement during the period May 30 through June 9, 1983, the NRC Staff determined that one containment pressure sensing line had been capped inside containment. This disabled containment pressure instrumentation for automatic initiation of one high pressure core spray pump, one alternate core spray pump, two containment isolation valves and one alternate core spray valve. This condition existed for approximately 19 hours while the plant was in startup and operation. This condition violated facility technical specifications.

The NRC served on the licensee a written Notice of Violation and Proposed Imposition of Civil Penalty by letter dated August 12, 1983. The Notice stated the nature of the violations, the provisions of the Atomic Energy Act, the Nuclear Regulatory Commission's regulations or license conditions that were violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty with a letter dated September 16, 1983.

III

Upon consideration of Dairyland Power Cooperative's response (September 16, 1983) and the statements of fact, explanation, and argument in denial or mitigation contained therein as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that, with one exception, technical specifications were violated as set forth in the Notice of Violation. The citation against Technical Specification 4.2.2.15 is withdrawn. The Director has further determined that the penalty proposed for the violation designated in the Notice should be mitigated.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96-295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Ten Thousand Dollars within thirty days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Should the licensee fail to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty as modified by Section III of this Order, and

(b) Whether on the basis of such violations this Order should be sustained.

Dated at Bethesda, Md., this 29th day of May 1984.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The licensee's September 16, 1983 response to the August 12, 1983 Notice of Violation and Proposed Imposition of Civil Penalty for the Dairyland Power Cooperative LACBWR plant requests mitigation of the amount of the civil penalty and provides reasons why the licensee believes mitigation of the penalty is appropriate. The licensee's arguments in support of mitigation are addressed below.

Evaluation of Licensee's Response

The licensee admits that Technical Specifications 4.2.2.18 and 3.0.4 were violated as described in the Notice of Violation. The licensee does not agree, however, that Technical Specifications 4.2.2.15 and 3.0.3 were violated.

With regard to Technical Specification 4.2.2.15, the licensee noted that neither core spray pump was removed from service for maintenance, therefore no violation occurred. The staff has reviewed this matter and agrees that neither core spray pump was out of service for maintenance during this event. Thus, the specific Technical Specification 4.2.2.15 was not violated and this reference is withdrawn from the Notice of Violation. However, one core spray pump was not available for automatic operation as required by Technical Specification 4.2.2.18 and thus a Limiting Condition for Operation was violated.

With regard to the requirements of Technical Specification 3.0.3, it is the NRC's position that the applicable action statement is invoked at the time that the event occurs. The applicable 12 hour action requirement began to run when the error occurred (i.e., when the sensing line was capped) and the reactor was in a mode where the

associated equipment was required to be operable. Therefore, Technical Specification 3.0.3 was violated as stated in the Notice of Violation.

Conclusion

Technical Specifications 3.0.3, 3.0.4 and 4.2.2.18 were violated as originally stated. The Notice of Violation has been modified to exclude reference to Technical Specification 4.2.2.15.

Evaluation of Licensee's Request for Civil Penalty Mitigation

The licensee states that sufficient cause has been demonstrated for a substantial reduction or remission of the proposed civil penalty of $40,000. The licensee urges the NRC to consider the comments contained in the mitigation factors which are set forth in Section IV.B of Appendix C to 10 CFR Part 2 for adjustment of the civil penalty.

Additionally, the licensee addresses the general applicability of the policy to the LACBWR facility. The response states that "Although LACBWR has been classified as a Power Reactor its inventory of nuclear material and, consequently, the risk to the health and safety of the public from an accident or violation is minimal. . . .LACBWR is the smallest commercial power reactor in the country and has a nuclear inventory which is not much larger than some test or research reactors."

While the Dairyland Power Corporation does operate a small reactor, LACBWR's size alone is not a sufficient justification for full mitigation of a civil penalty. The NRC Enforcement Policy specifically addresses different classes of licensees. The LACBWR facility is a commercial power reactor and the appropriate base civil penalty of $40,000 for a Severity Level III violation was properly proposed in this case.

Conclusion

Although there is no basis for mitigating the civil penalty solely because of the size of the facility, after considering: (1) the duration of the violation; (2) the size of the facility; and (3) the enforcement actions that resulted from similar violations at other facilities, the Director of the Office of Inspection and Enforcement has concluded that there is a basis for exercising his enforcement discretion and has mitigated the civil penalty to $10,000.

[FR Doc. 84-15196 Filed 6-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Availability of Safety Evaluation Report

Notice is hereby given that the Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of River Bend Station, located in West Feliciana Parish, Louisiana near St. Francisville, Louisiana. Notice of receipt of the application of Gulf States Utilities Company to operate River Bend Station, Units 1 and 2 was published in the **Federal Register** on September 4, 1981 (46 FR 44539-44540).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70830 for inspection and copying. The report (NUREG-0989) can also be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit holders can call (301) 492-9530.

Dated at Bethesda, Md., this 31st day of May 1984.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 84-15197 Filed 6-5-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23315; 70-5943]

American Electric Power Company, Inc.; Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan

May 31, 1984.

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed with this Commission a post-effective amendment to its declaration in this proceeding pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By orders in this proceeding dated February 8, 1977, April 19, 1978, March 29, 1979, August 8, 1979, May 1, 1980, June 30, 1981, June 15, 1982, and June 29, 1983 (HCAR Nos. 19879, 20506, 20979, 21180, 21544, 22113, 22539, and 22989), AEP was authorized to issue and sell, from time to time through June 30, 1984, up to 33,000,000 shares of its authorized but unissued common stock, $6.50 par value, pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Plan"). Through April 10, 1984, a total of 30,011,283 shares had been issued and sold, leaving a balance of 2,988,717 shares available for issuance and sale.

AEP now proposes to issue and sell, from time to time through June 30, 1985, up to an additional 11,000,000 shares of its authorized unissued common stock, plus the unsold balance of the shares of common stock heretofore authorized by the Commission for issuance, pursuant to the Plan. The price of shares purchased with reinvested cash dividends is 95% of the average of the daily high and low sales prices of AEP's common stock on the New York Stock Exchange for the five trading days ending on the day of purchase.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 25, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15210 Filed 6-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13976; 812-5767]

Capital Housing Partners—CLII, et al.; Filing of an Application for an Order Pursuant to Section 6(c) of the Act for Exemption From All Provisions of the Act

May 31, 1984.

NOTICE IS HEREBY GIVEN that Capital Housing Partners—CLII (the "Partnership"), One Central Plaza, 113000 Rockville Pike, Rockville, MD 20852, a District of Columbia limited partnership, and its general partners, Real Estate Equity Partners—CLII, a Maryland general partnership, and R.E.H., Inc., a Delaware corporation, which is also the "Managing General Partner" of the Partnership (the "General Partners", and together with the Partnership, the "Applicants"), filed an application on February 2, 1984, and an amendment thereto on May 17, 1984, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") for an order of the Commission exempting the Partnership from all provisions of the Act and the rules and regulations thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, a summary of which is set forth below, and to the Act and the rules thereunder for the provisions thereof which are relevant to a consideration of the application.

Applicants state that the purpose of the Partnership is to provide a vehicle for private investment in government assisted apartment complexes in accordance with the express determination of Title IX of the Housing and Urban Development Act of 1968. Applicants further state that the Partnership will operate as a "two-tier" partnership, i.e., the Partnership, as limited partner, will invest in seven other limited partnerships (the "Local Limited Partnerships"), each of which beneficially owns an existing apartment complex primarily for persons of low and moderate income (the "Apartment Complexes"), in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974). According to the application, certain of the Apartment Complexes are benefiting from the Section 8 program of the U.S. Department of Housing and Urban Development ("HUD"), whereas others are recipients of HUD Mortgage Loan Insurance under the section 236 program and rental supplement payments pursuant to Section 101 of the HUD Act of 1965.

Applicants represent that the Partnership is organized as a limited parnership because a limited partnership is the only form of organization which provides investors with both liability limited to their capital investment and the ability to claim on their individual tax teturns the deductions, losses, credits, and other tax items arising from the Partnership's interest in the Local Limited Partnership. Applicants further represent that, through its investment in the Local Limited Partnerships, the Partnership intends to realize a potential increase in its equity in the Apartment Complexes through amortization of their mortgage indebtedness, cash flow from operations, potential appreciation increases in the value of the Apartment Complexes, cash distributions from sale or refinancing of the Apartment Complexes, and certain tax benefits.

Applicants assert that the Partnership plans to offer approximately $16,125,000 of limited partnership interests in approximately 215 units (the "Units"), pursuant to Regulation D and Rule 506 under section 4(2) of the Securities Act of 1933. Applicants state that subscriptions for half Units may be accepted at the sole discretion of the Managing General Partner. Applicants further state that each subscriber will represent either that (1) he has a net worth (exclusive of home, home furnishings, and automobiles) in excess of $175,000 for each Unit purchased and anticipates that some part of his income (without regard to investment) through 1989 will be subject to federal income tax at the rate of 48% or more or (2) he either (a) has a net worth (or joint net worth with his spouse) in excess of $1,000,000 as of the date of the subscription agreement or (b) had individual gross income (exclusive of gross income of his spouse) in excess of $200,000 in 1982 and 1983 and reasonably expects to have individual gross income (exclusive of gross income of his spouse) in excess of $200,000 in 1984. Prudential-Bache Securities, Inc., CRICO Securities Corporation, and other selected broker-dealers will act as selling agents for the offering of Units. Purchasers of Units will become limited partners of the Partnership (the "Limited Partners"). According to the application, the Partnership will be controlled by its General Partners pursuant to the Limited Partnership Agreement and Third Amended Certificate of Limited Partnership, and the Limited Partners, consistent with their status, will not be entitled to participate in the control of the Partnership's business.

Applicants state that all compensation to be paid to the General Partners and their affiliates is specified in the Private Placement Memorandum and that no compensation will be payable to the General Partners or any of their affiliates if not so specified. According to Applicants, the General Partners believe that all such compensation is fair and on terms no less favorable to the Partnership that would be the case if such arrangements had been made with independent third parties. Applicants contend that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in various states which prescribe such guidelines, including, without limitation, the statement of policy adopted by the North American Securities Administrators Association, Inc., with respect to real estate programs.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request that the Partnership be exempt from all provisions of the Act. In support of this request, Applicants assert that such exemption is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act. Applicants assert that investment in low and moderate income housing is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form. Applicants state that a limited partnership would be unable to function in the manner contemplated by the Partnership if it is deemed to be an investment company under the Act. In addition, it is maintained that application of the Act would discourage two-tier limited partnership arrangements and thus eliminate the best available means of attracting private equity capital into government assisted housing and frustrate national policy.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 22, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order

disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-15204 Filed 6-5-84; 8:45 am]
BILING CODE 8010-01-M

[Release No. 23317; 70-6725]

Central and Southwest Corp. et al.; Hearing

In the Matter of CENTRAL AND SOUTH WEST CORPORATION, CENTRAL AND SOUTH WEST SERVICES, INC., 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75222; CENTRAL POWER AND LIGHT COMPANY, P.O Box 2121, Corpus Christi, Texas 78403; SOUTHWESTERN ELECTRIC POWER COMPANY, P.O. Box 21106, Shreveport, Louisiana 71156; PUBLIC SERVICE COMPANY OF OKLAHOMA, P.O. Box 201, Tulsa, Oklahoma 74102; WEST TEXAS UTILITIES COMPANY, P.O. Box 841, Abilene, Texas 79604; TRANSOK, INC., P.O. Box 3008, Tulsa, Oklahoma 74101; proposed increase in short-term borrowings by one subsidiary.

Central and South West Corporation ("CSW"), a registered holding company, and six of its subsidiaries, Central Power and Light Company, Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company, West Texas Utilities Company, and Central and South West Services, Inc., and PSO's Subsidiary, Transok Inc. ("Transok") have filed with this Commission a further post-effective amendment to their application-declaration in this proceeding pursuant to sections 6, 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, and 50(a)(5) promulgated thereunder.

By orders in this proceeding dated June 29, 1982, November 22, 1982, June 7, 1983, and August 1, 1984 (HCAR Nos. 22554, 22725, 22967, and 23018), CSW and its above-named subsidiaries were authorized to make short-term borrowings in an aggregate amount not to exceed $450 million through June 30, 1985. The individual borrowing limit for Transok is $30 million. Transok's borrowings can be effected through the CSW system money pool or bank borrowings.

It is now proposed that Transok be authorized to increase its borrowing limit to an aggregate principal amount at any one time outstanding not to exceed $60 million. Transok states that it intends to purchase from Houston Natural Gas Corporation ("HNG") an ownership interest in a portion of a 30 inch pipeline (the "pipeline") which HNG proposes to purchase from Texoma Pipe Line Company. The pipeline extends generally from a point near the City of Cushing, Oklahoma, southerly to a point near the City of Beaumont, Texas, together with a 16 inch lateral pipeline which extends generally from a point near the City of Allen, Oklahoma, westerly to a point near the City of Wynnewood, Oklahoma. Transok intends to purchase an approximately 32% ownership interest in the pipeline relating only to a portion of the pipeline which extends from Transok's current facilities to a border crossing line near the Oklahoma-Texas border. The aggregate purchase price for the pipeline will be $130 million. Transok expects that its portion of the purchase price will be up to approximately $42 million and that, in connection with such purchase, Transok will be required to expend an additional approximately $20 million for pipeline enhancement and costs of conversion to its current pipeline system. Transok proposes to finance the above with long-term financing. The proposed borrowings of up to $60 million by Transok will be for interim financing only. In all other respects, the amended application-declaration and the borrowing limits set forth therein will remain the same.

The post-effective amendment to the application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 25, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-15207 Filed 6-5-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 23316; 70-6986]

Eastern Edison Company; Proposal to Issue and Sell First Mortgage Bonds

May 31, 1984.

Eastern Edison Company, 110 Muberry Street, Brockton, Massachusetts 02403, a public utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6(b), 9(a), 9(c) (1) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 40(a)(1), 42(b)(2) and 50 thereunder.

Eastern proposes to issue and sell not more than $40,000,000 aggregate principal amount of its First Mortgage and Collateral Trust Bonds ("New Bonds") through June 30, 1985. The New Bonds are to comprise one, two or three series (which may differ from one another in interest rates and maturities) under Eastern's Indenture of First Mortgage and Deed of Trust dated as of September 1, 1948, as supplemented and to be further supplemented. All of the New bonds will be issued substantially contemporaneously, and none of them will mature earlier than three years from the first day of the month in which they are issued or later than thirty years from such date. The price, exclusive of accrued interest, to be paid to Eastern for the New Bonds or any series thereof will be not less than 98% nor more than 102¾% of the principal amount thereof.

If it appears to Eastern that conditions are favorable for the sale of intermediate-term bonds by private placement, Eastern will attempt to negotiate such placement (not for resale to the public, and without the payment of any finder's fee or remuneration for negotiating the transaction) with one or more commercial banks, insurance companies or similar institutions. In such event, the New Bonds will have a maturity of ten years or less. If conditions do not appear favorable for a private placement on those terms, Eastern would (i) proceed with a sale of the New Bonds under competitive conditions complying with the requirements of Rule 50 under the Act or (ii) amend this application-declaration to request an exception pursuant to paragraph (a)(5) of Rule 50 to permit a

sale of the New Bonds by private placement.

The proceeds of the New Bonds will be used (i) to pay at maturity Eastern's First Mortgage and Collateral Trust Bonds, 3⅜% Series due June 1, 1985, now outstanding in the principal amount of $6,000,000 ("First 1985 Series Bonds"), (ii) to redeem or pay Eastern's First Mortgage and Collateral Trust Bonds, 12% Second Series due June 1, 1985 now outstanding in the principal amount of $19,800,000 ("Second 1985 Series Bonds"), (iii) to prepay or pay the then outstanding portion of Eastern's promissory note dated January 25, 1979 payable to and held by Citibank, N.A., now outstanding in the principal amount of $10,000,000 payable in three substantially equal installments on December 1, 1984, June 1, 1985 and December 1, 1985 ("Citibank Note"), and (iv) for Eastern's general corporate purposes. The portion of the proceeds of the New Bonds to be used to pay the First 1985 Series Bonds at maturity may be temporarily invested in securities meeting the requirements of sections 9(c)(1) of the Act or of Rule 40 (a)(1) or (2). The Second 1985 Series Bonds are redeemable a the option of Eastern at any time during the twelve months' period beginning June 1, 1984 at 100% of their principal amount. The Citibank Note is prepayable at any time by Eastern without penalty or premium.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 25, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15211 Filed 6-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13971; 811-770]

Electronics Investment Program; Filing of Application for Order Declaring That Applicant has Ceased to be an Investment Company

May 30, 1984.

Notice is hereby given that Electronics Investment Program ("Applicant"), c/o EFC Sponsors, 1599 Littleton Road, Parsippany, New Jersey 07054, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust issuing periodic payment plan certificates for the purchase and accumulation of shares of American Capital Enterprise Fund Inc. ("American Capital"), filed an application on January 9, 1984, and an amendment thereto on March 28, 1984, for an order, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for further information as to the provisions relevant to a consideration of the application.

Applicant states that it filed a notification of registration and registration statement under the Act on March 18, 1957 and August 15, 1957 respectively. According to the application, on July 15, 1983, there was a total of 59,340.959 shares outstanding, with a new asset value of $16.20 per share and an aggregate net asset value of $961,323.53. Those shares were the only class of securities issued and outstanding, all of which were invested in shares of American Capital.

The application represents that, on December 9, 1983, planholders were mailed an announcement of termination of the Applicant. Also enclosed in that mailing, according to the application, was a letter of transmittal notifying planholders of their option to either: (1) Receive the balance of proceeds of liquidation of all shares after authorized charges had been deducted, or (2) receive all such shares in an identical registered account in the planholder's name of the books of the voluntary account of American Capital, after sufficient shares had been liquidated to pay authorized charges.

Applicant represents that in connection with the termination, Applicant's custodian received responses from 195 of Applicant's 691 planholders. Of those responding, 173 elected to redeem their shares and 22 elected to transfer to the voluntary account of American Capital. Applicant further states that the custodian exercise its discretion in transferring to American Capital's voluntary account the shares of the non-responsive planholders.

Finally, Applicant states that it had no security-holders at the time of the filing of the application, that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15209 Filed 6-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13977; 812-5714]

First Southern Capital Corporation, et al.; Application Requesting Exemption and, Requesting Approval of the Proposed Transaction, and Declaring That Applicant Will Cease to be an Investment Company Upon Completion of the Proposed Transaction

May 31, 1984.

Notice is hereby given that First Southern Capital Corporation ("First Southern") 6161 Perkins Road, Suite 2-C, Baton Rouge, Louisiana 70808, registered under the Investment Company Act of 1940 ("Act") as a closed-end, investment company, and Crabtree Investments, Inc. ("Crabtree"), which owns 90.6 percent of the stock of and is investment adviser to First Southern, filed an application on December 5, 1983, and amendments thereto on January 18, May 3, and May 25, 1984, for an order

pursuant to Sections 17(b), 17(d) and 23(c) of the Act, and Rules 17d–1 and 23c–1 thereunder, permitting the proposed merger of First Southern into a new corporation ("Newco") to be formed and wholly-owned by Crabtree. The application also requests an order pursuant to Section 8(f) of the Act declaring that upon completion of the merger, First Southern will cease to be an investment company under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of provisions pertinent to the application.

According to the application, First Southern is a California corporation which, in addition to being an investment company registered under the Act, is a small business investment company regulated by the Small Business Administration. Applicants state that First Southern's common stock, for which there is not public trading market, consists of 725,927 shares held of record by 304 people. Applicants further state that First Southern has paid no cash dividends during the preceding ten years, although there was a dividend of certain portfolio securities paid in 1982, and that it has no intention of paying dividends in the foreseeable future. According to First Southern's semi-annual report for the period ended September 30, 1983, a copy of which is an exhibit to the application, First Southern's total assets are $4,268,465 and its total shareholder's equity is $1,394, 336. Applicants state that First Southern also had a net asset value per share of $1.92.

Applicants state that Crabtree is a Louisiana Corporation which conducts an investment advisory business, and that First Southern is Crabtree's principal advisory client. Applicants further state that John J. Crabtree ("Mr. Crabtree"), whose principal occupation is president and chairman of the board of directors of First Southern, is the sole director, president and controlling person of Crabtree, owning 83 percent of Crabtree's outstanding securities (Crabtree's profit-sharing plan owns the remaining 17 percent and, according to Applicants' counsel, has five beneficiaries).

Applicants state that the proposed merger, which must be approved by the Small Business Administration, will be a short-form merger under Louisiana and California law, and thus will be effected without a vote of First Southern's shareholders. Under the proposed plan, Crabtree would contribute all of its holdings of First Southern stock to Newco in return for all of the capital stock of Newco, and then each share of First Southern stock held by Newco would be cancelled and each share of stock held by any other shareholder would be exchanged for a cash payment equal to $1.92 or such higher value as First Southern's board of directors determines at a meeting to be held shortly before the proposed effective date of the merger. Applicants state that Newco's working capital will be the source of funds used to effect the merger and that, assuming a price to minority shareholders of $1.92, the merger will cost Newco approximately $131,160 plus expenses. According to the application, Crabtree currently intends to make a capital contribution to Newco in an amount sufficient to pay the cash-out price to minority shareholders. Applicants represent that, although First Southern (or its successor, Newco), for the convenience of accounting, has paid, or will pay, expenses incurred in connection with the merger, Crabtree will partially reimburse First Southern (or Newco) for each such expense based on the proportion that the approximate net assets of Crabtree bears to the approximate combined net assets of Crabtree and First Southern (or Newco) at the time of payment of each such expense by First Southern (or Newco). Applicants state, however, that Crabtree does not intend to make an additional payment to First Southern representing the time value of money accruing between the date of payment by First Southern of each expense and the date upon which it is reimbursed; Applicants state that a figure representing such time value would be difficult to compute and, moreover, would be insignificant, given the short period of time that has elapsed since the date of payment by First Southern of most of the merger related expenses incurred to date.

Applicants state that the $1.92 price is equal to the net asset value per share of First Southern as unanimously determined by the First Southern's interested and disinterested directors at their meeting held on October 27, 1983. Applicants further state that to aid in its determination of First Southern's fair value, the board of directors examined two reports, one by Mr. Crabtree and one by Floyd W. Collins ("Mr. Collins"), which detailed First Southern's porfolio investments and the values thereof. According to the application, the board voted to accept, as the fair value of a particular portfolio investment, the value ascribed by Messrs. Crabtree and Collins, where such values were identical; where the two valuation figures differed, the board, with one exception, determined that the higher value was the fair value of such investment. Applicants state that the board's valuatioan of First Southern's investment in Houston Oil Fields Company ("HOFCO") is the sole instance in which the board adopted the lower valuation figure; Mr. Crabtree valued the investment at cost because the provisions of Section 16(b) of the Securities Exchange Act of 1934 would have prevented First Southern from realizing a profit on any sale of HOFCO securities, had such sale occured on September 30, 1983 (the six month period for Section 16(b) expired on December 25, 1983), while Mr. Collins only deemed it necessary to apply a discount from market value to account for the provisions of Section 16(b). Applicants also note that First Southern's shareholders have the right, under the California General Corporations Law, to either contest the validity of the merger or to invoke certain appraisal rights. While the Commission does not necessarily agree with the methods used to value the investment in HOFCO, it believes that, viewing the terms of the proposed transaction on the whole, it is appropriate to issue the instant notice of the filing of the application.

According to the application, Mr. Collins was formerly an officer of First Southern and compensated as an employee of Crabtree with overall responsibility for First Southern's investment and portfolio management and is therefore knowledgable about those companies. Applicants state that Mr. Collins resigned from First Southern on August 16, 1983 and, upon his departure, received a payment from the Crabtree profit-sharing plan; Applicants state that M. Collins has no current connection with either First Southern or Crabtree. Applicants represent that First Southern's management considered retaining an independent investment banker to ascribe a fair value to First Southern's shares, but that the cost was prohibitive for a company the size of First Southern. Applicants state that three such firms headquartered in the middle South were contacted, and that one of these investment bankers stated that visits to the headquarters of each portofolio company was necessary to properly appraise First Southern's assets, and that such an appraisal would cost $30,000 plus expenses; the second investment banker confirmed the necessity of visiting the portfolio companies, but would not give an estimate of the appraisal cost; and the third one was unable to perform an

appraisal. Applicants state that assuming (i) and appraisal would cost $30,000 in fees and $5,000 in cost reimbursements, (ii) the percentage of such cost required to be paid by First Southern (based on its proportion of the combined assets of Crabtree and First Southern Shown as an exhibit to the application) would be 44 percent, and (iii) the price paid to minority shareholders would be $1.92 per share, the appraisal cost would represent approximately 12 percent of the aggregate payments made to the minority shareholders for their shares and more than 1.1 percent of total shareholders' equity of First Southern as of September 30, 1983.

Applicants state that the material factors upon which they base their belief that the merger, and the price to be received by the minority shareholders upon disposition of their shares, will be fair are: (1) Because Crabtree owns 90.6 percent of First Southern's shares, there is as a practical matter, no other buyer for the shares held by minority shareholders; (2) except for the 1982 dividend, First Southern has paid no dividend during the past 10 years ans has not plans to pay any dividends in the future; (3) there are no prospects for the sale of First Southern to, or merger of First Southern with, any unafiliated third parties; (4) if the merger is not consummated, it is unlikely that the minority shareholders will realized any return from their holdings in the foreseeable future; and (5) the minority shareholders will receive net asset value for their shares. According to an exhibit to the application in the form of a letter dated May 18, 1984, Mr. Collins states that he is not aware of any developments in First Southern's portfolio companies which would cause an increase in the net asset value of First Southern above $1.92 per share. First Southern undertakes to obtain an updated valuation report in the event that the merger is not consummated prior to October 1, 1984.

Applicants contend that the terms of the proposed merger described above, including the price to be received by the minority shareholders, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants further contend that the proposed merger is consistent with First Southern's policies and with the purposes of the Act. In addition, Applicants assert that Crabtree's participation in the proposed merger will not be on a more advantageous basis than that of First Southern's minority shareholders, and that the acquisition of First Southern's shares pursuant to the merger will not be made in a manner that unfairly discriminates against any holders of its shares.

Applicants state that if the requested order is granted, and if the other conditions described in the application are satisfied, the merger will be consummated and First Southern's separate corporate existence will terminate. Applicants further state that Newco, all of whose outstanding securities are owned by Crabtree, whose securities are in turn owned by Mr. Crabtree (83 percent) and the Crabtree prodit-sharing plan (17 percent), will continue the operations of First Southern and will not make a public offering of its securities in the foreseeable future. Applicants assert that, accordingly, upon consummation of the merger, First Southern will cease to be an investment company as defined in the Act, and they request an order to that effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 25, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, and order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15205 Filed 6-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13978; 812-5841]

Lehman Management Co., Inc., et al.; Application for an Order Granting Exemption From the Definition of "Interested Person" of an Investment Adviser

May 31, 1984.

Notice is hereby given that Lehman Management Co., Inc. ("LEMCO") and Edgar R. Fiedler ("Applicants"), 55 Water Street, New York, New York 10041, filed an application on May 4, 1984, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Mr. Fiedler from the definition of "interested person" of an investment adviser, as set forth in Section 2(a)(19)(B) of the Act, solely for the purpose of determining whether certain investment companies registered under the Act have Boards of Directors at least 75% of the members of which are not "interested persons" of LEMCO as required by Section 15(f) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicants state that LEMCO is a wholly-owned subsidiary of Lehman Brothers Kuhn Loeb Incorporated ("LBKL"), which in turn is a wholly-owned subsidiary of Lehman Brothers Kuhn Loeb Holding Co., Inc. ("LBKL Holding"). Applicants further state that American Express Company ("American Express"), Shearson/American Express Holdings Inc. and the Stockholders of LBKL Holding have entered into an Agreement for Purchase of Stock (the "Purchase Agreement") and a Stock Option Agreement (the "Option Agreement") whereby American Express has agreed, or obtained an option, to purchase all of the capital stock of LBKL Holding (the "Stock Purchase"). Upon the consummation of the Stock Purchase, and assuming the exercise (which cannot occur prior to November 19, 1984) of the option granted under the Option Agreement, the former stockholders of LBKL Holding will receive aggregate consideration of approximately $325 million, substantially all of which will be paid in 12½% promissory notes and 9% convertible promissory notes of American Express; certain of the former stockholders may be entitled to participate in special bonus compensation pools. The consummation of the Stock Purchase is subject to certain conditions, including the obtaining of any necessary consents and approvals.

Applicants state that American Express has represented in the Purchase Agreement that it is the current intention of American Express that, following the consummation of the Stock Purchase, LEMCO will continue to be operated in the same manner as at present by its current management under the supervision of its own Board of Directors. Applicants also state that the Stock Purchase is currently not expected to result in changes in the personnel at LEMCO who manage the

portfolios of the investment companies to which LEMCO serves as investment manager.

Applicants state that LEMCO currently serves as investment manager to Lehman Cash Management Fund, Inc., The Lehman Corporation, Lehman Government Fund, Inc., Lehman International Dollar Funds, Inc., Lehman Investors Fund, Inc., Lehman Tax-Free Reserves, Inc., Mariner Institutional Funds, Inc., and Mariner Tax-Free Institutional Funds, Inc. (the "Funds"). LEMCO also serves as investment manager to three other investment companies and various individuals and institutions.

Applicants recognize that the consummation of the Stock Purchase may be deemed to give rise to a change in control of LBKL Holding and indirectly to a change in control of LEMCO. Such a change in control of LEMCO could be deemed to result in an "assignment" as defined in Section 2(a)(4) of the Act and, accordingly, in the automatic termination of the existing management contracts between LEMCO and the Funds as required by Section 15(a)(4) of the Act.

Applicants state that LEMCO wishes to continue its relationships with the Funds on the same terms and conditions, including the management fees charged, as those provided in the existing management contracts. Applicants state that the Boards of Directors of Lehman Cash, Lehman Corporation, Lehman Government, Lehman International, Lehman Investors and Lehman Tax, including all of the "non-interested" directors of those Funds, at meetings held in April 1984, approved new managment contracts with LEMCO, which are in all material respects identical to the existing contracts. The new contracts were approved by stockholders of those Funds at special meetings held on May 24, 1984. The Boards of Directors of Mariner Institutional and Mariner Tax-Free met on May 14, 1984 and have adopted management arrangements for those Funds with advisers other than LEMCO.

Applicants state that it is prudent for LEMCO to seek to meet the terms of Section 15(f) of the Act, which provides that an investment adviser, or an affiliated person thereof, may receive any amount or benefit on the sale of securities of, or an interest in, an adviser which results in an assignment of an advisory contract with a registered investment company, if for three years following the assignment, at least 75% of the board of directors of the registered investment company are not "interested persons" of the investment adviser or his predecessor.

Applicants state that they have considered the composition of the Boards of Directors of the Funds in light of the condition in Section 15(f)(1)(A) of the Act. Applicants state that in order to comply with Section 15(f)(1)(A) the Funds have limited alternatives: they can obtain the resignations of Board members who are "interested persons" or increase the size of their respective Boards of Directors. Because of the limited time available, a certain number of "interested persons" are resigning from the Board of each of the Funds in order to meet the 75% requirement. Applicants state that even after taking into consideration the resignations that have been submitted, each of the Funds will be in violation of the 75% requirement if Mr. Fiedler is deemed to be an "interested person" of LEMCO.

Applicants state that the Stock Purchase was consummated on May 11, 1984, and since the "non-interested" directors did not elect new "non-interested" directors prior to that time, Mr. Fiedler and an additional "interested" director resigned from the Board of Directors of the Funds as of that date. Applicants state that assuming their request for an exemptive order is granted subsequently, it is expected that Mr. Fiedler will thereafter be nominated and reelected to each of the Boards by votes of the remaining directors.

Applicants state that Mr. Fiedler beneficially owns 6,099 shares of American Express common stock which includes 60 shares issuable upon the exercise of 30 warrants, each of which entitles the holder to purchase two shares of American Express common stock and each of which expires on February 28, 1987. Of the 6,099 shares, Mr. Fiedler disclaims beneficial ownership of 999 shares and 5 warrants (representing 10 shares), which he holds as custodian for his daughter.

Section 2(a)(19)(B)(iii) of the Act defines an "interested person" of an investment adviser to be any person who knowingly has any direct or indirect beneficial interest in any security issued either by such investment adviser or by a controlling person of such investment adviser. Applicants state that under Section 2(a)(19)(B)(iii) of the Act, Mr. Fiedler was deemed to be an "interested person" of LEMCO following the consummation of the Stock Purchase solely by reason of his beneficial ownership of 6,099 shares of common stock issued by American Express.

Applicants represent that assuming for the purpose of their application that new management contracts with LEMCO (containing the same terms and conditions, including the fee charged to each of the Funds) are approved by the stockholders of each of the Funds and, in the case of Mariner Institutional and Mariner Tax-Free, by those Funds' Boards of Directors, the revenues derived by LEMCO from its investment management relationship with the Funds will not have any noticeable effect on revenues earned by American Express. American Express had total revenues in calendar 1983, on a consolidated basis, of approximately $4,037,000,000. The application states that for calendar 1983, management fees paid by the Funds to LEMCO aggregated approximately $9,311,773 (this assumes no waivers of management fees, and does not include Lehman International which did not commence operations until February 15, 1984). Applicants state that aggregate management fees from the Funds would have represented only .23% of American Express' total revenues last year.

Applicants assert that the income derived by Mr. Fiedler from his beneficial ownership of American Express common stock will not be affected in any noticeable degree by management fees paid by the Funds to LEMCO. Applicants assert that Mr. Fiedler's beneficial ownership of American Express common stock does not create a close tie between LEMCO and Mr. Fiedler. At March 31, 1984, Mr. Fiedler beneficially owned approximately .0028% of the issued and outstanding American Express common stock.

Applicants state that no request is made at this time that Mr. Fiedler be deemed to be a "non-interested" director for any provision of the Act other than Section 15(f). Further, they have made no request for any conclusion by the Commission concerning whether the proposed acquisition of LBKL Holding by American Express might be deemed to impose an unfair burden on the Funds within the meaning of Section 15(f).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 25, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of

service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15203 Filed 6-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13975; File No. 812-5838]

Voyager Life Insurance Company, et al.; Application for an Order Granting an Exemption

May 31, 1984.

Notice is hereby given that Voyager Life Insurance Company ("Voyager Life") and Voyager Variable Annuity Account D ("Account D"), 2255 Phylis Street, Jacksonville, Florida 32204, a separate account registered under the Act as an open-end management company and offering variable annuity contracts (collectively, "Applicants"), filed an application on April 27, 1984, and an amendment thereto on May 30, 1984, for exemptive relief pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"). Applicants request an order granting relief from section 24(f) under the Act and Rules 24f-1 and 24f-2 thereunder in the circumstances described below. Interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and Rules thereunder for a statement of the relevant statutory provisions.

In connection with the offer of certain variable annuity contracts, Account D registered an indefinite number of securities under the Securities Act of 1933 ("1933 Act"), as permitted by section 24(f) of the Act and Rule 24f-2 thereunder, and in connection therewith undertook to file, within six months after the end of each fiscal year, a Rule 24f-2 notice (a "Notice"). Account D represents that it inadvertently failed to file a Notice by June 30, 1983, which is six months after the end of its fiscal year. At the time of this failure, paragraph (b)(2) of Rule 24f-2 provided that an issuer's registration statement would terminate if a Notice was not timely filed and that the issuer should discontinue sales pursuant to that registration statement. Applicants state that a substantial amount of securities were sold subsequent to June 30, 1983. Upon discovery of the omission, Account D terminated sales pursuant to the registration statement on February 10, 1984 and filed a new registration statement, effective February 28, 1984.

Applicants request that the Commission, pursuant to section 6(c), grant them an exemption to the extent necessary to permit them: (1) To rely on amended Rule 24f-2 as it was adopted subsequent to Applicants' failure to file a Notice (*see* Investment Company Act Rel. No. 13624 [Nov. 14, 1983]), in order that their registration statement would not be deemed to terminate as of June 30, 1983; (2) to rely on Rule 24f-1 in order to register securities sold between July 1, 1983 and February 10, 1984.

In support of the relief requested, Applicants make the following representations: (1) the Commission, in amending Rule 24f-2, has recognized that termination of an issuer's registration statement because of failure to file a Notice is too harsh a result; (2) Applicants will comply with all requirements of amended Rule 24f-2, and in connection with the retroactive registration of securities in reliance on Rule 24f-1, Applicants will, *inter alia*, pay a fee equal to three times the registration fee as calculated in Section 6(b) of the 1933 Act; (3) no contractowner has been injured in any way by the inadvertent failure to file a timely Notice, nor will granting the relief erode the integrity of the registration process since each potential investor has received all required prospectuses; (4) granting the requested relief will not be detrimental to contractowners because Voyager Life has agreed to bear all costs arising from Applicants' failure to file a timely Notice; and (5) Applicants best judgment, which is based in part on the exhibit to the application showing the monthly accumulation unit value for Account D for the period July 1, 1983 to March 1, 1984, is that the relief requested will not deprive any contractowner of any material advantage or opportunity otherwise available under or pursuant to the 1933 Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 22, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washinton, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15206 Filed 6-5-84; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Concerning Quota for U.S. Imports of Coffee From Nonmembers of the International Coffee Agreement

The International Coffee Organization has not yet announced the non-member quota for 1984–1985. As a result, the United States cannot yet determine what level its non-member import limit will be for 1984–1985. It is expected that these limits will be established in September 1984. In order to give interested parties needed time to make

appropriate commercial arrangements, the United States will not open its non-member import quota until February 1, 1985. The Office of the U.S. Trade Representative will file a notice with the Federal Register once it has been informed of the United States non-member import limit for 1984–1985.

Dated: May 31, 1984.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-15138 Filed 6-5-84; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Lycoming County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Lycoming and Lewis Townships, Lycoming County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108, Telephone: (717) 782–4422 or Mr. Kenneth C. Larson, Jr., P.E., District Engineer, Pennsylvania Department of Transportation, District 3–0, 715 Jordan Avenue, Montoursville, Pennsylvania 17754–0218, Telephone: (717) 368–4200.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will prepare a Supplemental Environmental Impact Statement (SEIS) on a proposal to relocate Traffic Route 15 in Lycoming and Lewis Townships, Lycoming County. This SEIS is being initiated as a result of a new alignment considered during the development of alternatives for the Design Location phase of the relocation of Traffic Route 15. The proposal involves a modification to the approved corridor location for Traffic Route 15, a four-lane limited access facility, for a distance of 3.5 miles between the Villages of Perryville and Powys.

Alternates under consideration include (1) the approved corridor between the Villages of Perryville and Powys and (2) a corridor approximately one mile to the west of existing Traffic Route 15, not previously considered in the Final Environmental Impact Statement of the project. The SEIS process will include detailed Studies of Air Quality, Noise, Social-Economical and Land Use, Ecology, Water Quality, Cultural Resources, Farm Land, and Traffic and Transportation.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and Local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in the Perryville area between June and August 1984. In addition, a public hearing will be held. Public notices will be given of the time and place of the meetings and hearing. The draft environmental document will be available for public and agency review and comments. A formal scoping meeting is planned for June 1984.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the environmental document should be directed to the FHWA at the address provided above.

"Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, Intergovernmental Review of Federal Preograms, regarding state and local review of Federal and Federally assisted programs and projects apply to this program."

Issued on: May 30, 1984.

Louis M. Papet,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 84-15176 Filed 6-5-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

U.S. Customs Service

OMB Number: 1515–0054
Form Number: Customs Form 3173
Type of Review: Extension
Title: Application for Extension of Bond for Temporary Importation

Comptroller of the Currency

OMB Number: 1557–0102
Form Number: CC 7610–01 and CC 7610–02
Type of Review: Extension
Title: Notice of International Activity and Report of International Activity

OMB Number: 1557–0127
Form Number: FFIEC 001, 006
Type of Review: Extension
Title: Annual Report of Trust Assets/Special Report-Trust Department Activities/Interagency Survey of Corporate Foreign Fiduciary Activities

OMB Number: 1557–0142
Form Number: None
Type of Review: Extension
Title: Recordkeeping and Confirmation Requirements for Securities Transactions—12 CFR 12

OMB Number: 1557–0037
Form Number: CC 7023–02
Type of Review: Revision
Title: Application for Approval to (Merge, Consolidate, Purchase)

OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: May 31, 1984.

Joseph A Donahue,

Departmental Reports Management Office.

[FR Doc. 84-15141 Filed 6-5-84; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 22]

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $6,002,000 has been established for the company.

Name of Company:
Foremost Insurance Company, Grand Rapids, Michigan
Business Address:
5800 Foremost Drive SE., P.O. Box 2450, Grand Rapids, MI 49501

State of Incorporation:
Michigan

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30533 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, DC 20226.

Dated: May 30, 1984.

W. E. Douglas,

Commissioner.

[FR Doc. 84-15151 Filed 6-5-84; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Appointment of Certain Health Care Personnel

AGENCY: Veterans Administration.

ACTION: Public Notice.

SUMMARY: The Veterans Administraiton is publishing notice of the final version of an internal proposed VA circular to implement the provisions of section 203 of Pub. L. 98-160, Veterans' Health Care Amendments of 1983, approved November 21, 1983. The circular concerns veteran preference in the appointment of certified or registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses in DM&S (Department of Medicine and Surgery) under excepted authority of 38 U.S.C. 4104(3). Under section 203 of Pub. L. 98-160 (38 U.S.C. 4106(g)) the Administrator of Veterans Affairs may establish qualification standards for and authorize appointments to these positions without regard to civil service requirements. When using this appointment authority, however, the Administrator is required to apply the principles of preference for the hiring of veterans and other person established of preference for the hiring of veterans and other persons established in subchapter I of chapter 33, Title 5, United States Code.

EFFECTIVE DATE: May 16, 1984.

FOR FURTHER INFORMATION CONTACT: Earl W. Koteen, Chief, Title 38 Health Care Personnel Division, (202) 389-2033.

SUPPLEMENTARY INFORMATION: The VA circular, "Veteran Preference in the Appointment of Certain DM&S Health Care Personnel Under 38 U.S.C. 4104(3)," was published for review and comment on pages 6596 and 6597 of the Federal Register of February 22, 1984. Interested persons were given 30 days to comment.

Two comments were received. One concerned credentialing of health care appointees and did not recommend any change to the veteran preference provisions in the proposed circular. No change has been made to the provisions of the proposed circular due to this comment.

The other comment addressed the circular not stating that its provisions would be added to Veterans Administration Personnel Policy Manual MP-5, Part II. We have revised the circular to so state.

The policy contained in this circular is not being proposed for inclusion in the Code of Federal Regulations since it regulates internal appointment practices with DM&S. In addition, it is related to Agency management and personnel matters and, as such, is generally exempt from the Administrative Procedures Act (5 U.S.C. 551, et seq.).

Dated: May 30, 1984.

By direction of the Administrator

Everett Alvarez Jr.,

Deputy Administrator.

[Circular 00-84-13]

Date: May 16, 1984.

Veteran Preference in the Appointment of Certain DM&S Health Care Personnel Under 38 U.S.C. 4104(3)

1. *Purpose.* To implement the provisions of section 203 of Pub. L. 98-160, Veterans' Health Care Amendments of 1983, approved November 21, 1983, concerning the application of veteran preference in the appointment of certified or registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses under excepted authority of 38.U.S.C. 4104(3) in DM&S (Department of Medicine and Surgery). The provisions of this circular will be added to Veterans Administration Personnel Policy Manual MP-5, Part II, Chapter 2, "Appointments."

2. *Discussion.* Under section 203 of Pub. L. 98-160 (38 U.S.C. 4106(g)) the Administrator of Veterans Affairs may establish qualification stanadards for and authorize the above appointments without regard to civil service requirements. When using this appointment authority, the Administrator shall apply the principles of preference for hiring of veterans and other persons established in subchapter I of chapter 33, Title 5, United States Code.

3. *Veteran Preference.* The following applies to appointments under authority of 38 U.S.C. 4104(3) in DM&S to the positions of certified or registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse. When eligible candidates for such appointments are determined to be approximately equally qualified for a particular opening, hiring preference will be given to veterans and preference eligibles, as defined in 5 U.S.C. 2108. Selections from among these candidates will be made in the following order:

a. Disabled veterans who have a service-connected disability of 10 percent or more.

b. Preference eligibles under 5 U.S.C. 2108(3) (C)-(G) other than those above.

c. Preference eligibles under 5 U.S.C. 2108(3) (A) and (B).

d. All other candidates.

4. Rescission: This curcular expires July 1, 1985.

[FR Doc. 84-15156 Filed 6-5-84; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Cooperative Studies Evaluation Committee; Availability of Annual Report

Under section 10(d) of Public Law 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report for fiscal year 1983 has been issued for the Veterans Administration Cooperative Studies Evaluation Committee.

The report summarizes activities of the Committee on matters related to the review and evaluation of new and on-going cooperative studies. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room LM 133, Madison Building, Washington, DC. 20540

and

Veterans Administration, Medical Research Service, Cooperative Studies Program, Room 748, 810 Vermont Avenue, NW., Washington, DC. 20420.

Dated: May 29, 1984.

By Direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-15157 Filed 6-5-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 110
Wednesday, June 6, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 11, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 1, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-15200 Filed 6-1-84; 4:35 pm]

BILLING CODE 6210-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-48-26]

TIME AND DATE: [See below for time] Tuesday, June 12, 1984.

PLACE: 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Morning Session—10:00 a.m., in Room 331 (Hearing Room):

1. Investigation TA-201-51 (Carbon and Alloy Steel Products)—briefing and vote on injury.

Afternoon Session—2:30 p.m., in Room 117:

2. Agenda.
3. Minutes.
4. Ratifications.
5. Petitions and complaints:
   a. Apparatus for installing electrical lines and components therefor (Docket No. 1054).
6. Investigation TA-201-52 (Unwrought Copper)—briefing and vote on injury.
7. Investigation 701-TA-209 [Final] (Carbon Steel Wire Rod from Spain)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[FR Doc. 84-15214 Filed 6-4-84; 8:49 am]

BILLING CODE 7020-02-M

3

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: [49 FR 22016 5/24/84].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, May 18, 1984.

CHANGE IN THE MEETING: Additional item.

The following additional item will be considered at a closed meeting scheduled for Thursday, May 31, 1984, following the 10:00 a.m. open meeting.

Chapter 11 proceeding.

Chairman Shad and Commissioners Treadway, Cox and Marinaccio determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or posponed, please contact: Steve Molinari at (202) 272-2467.

May 31, 1984

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-15212 Filed 6-1-84; 5:30 pm]

BILLING CODE 8010-01-M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 4, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, June 5, 1984, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox and Marinaccio voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 5, 1984, at 10:00 a.m., will be:

Formal order of investigation.

Institution of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive actions.

Settlement of administrative proceeding of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bill Fowler at (202) 272-3077.

George A. Fitzsimmons,

Secretary.

May 31, 1984.

[FR Doc. 84-15213 Filed 6-1-84; 5:03 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
June 6, 1984

Part II

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Regulation of Benzene; Response to Public Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2523-7]

National Emission Standards for Hazardous Air Pollutants; Regulation of Benzene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Response to public comments.

SUMMARY: The Environmental Protection Agency (EPA) listed benzene as a hazardous air pollutant under Section 112 of the Clean Air Act on June 8, 1977 (42 FR 29332). Standards were subsequently proposed for maleic anhydride process vents (45 FR 26660, April 18, 1980); ethylbenzene/styrene (EB/S) process vents (45 FR 83448, December 18, 1980); benzene fugitive emission sources (46 FR 1165, January 5, 1981); and benzene storage vessels (45 FR 83952, December 19, 1980). This **Federal Register** notice responds to public comments on the listing, health effects, and regulation of benzene as a hazardous air pollutant.

ADDRESSES: *Background Information Document.* The background information document (BID) may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Response to Public Comments on EPA's Listing of Benzene Under Section 112," EPA-450/5-82-003, which contains a summary of all public comments on the health effects, listing, and regulatory approach for benzene.

Docket. Docket No. OAQPS 79-3 (Part I) contains information considered on the health effects, listing, and regulation of benzene. Other dockets containing public comments on the listing, health effects, and regulation of benzene are contained in Docket No. OAQPS 79-3 (Part II), for maleic anhydride plants; Docket No. A-79-27, for benzene fugitive emissions; Docket No. A-79-49, for EB/S plants; and Docket No. A-80-14, for benzene storage vessels. These dockets are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the listing and health effects of benzene, contact Mr. Robert Kellam, Pollutant Assessment Branch, Strategies and Air Standards Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5645. For further information on the regulation of benzene, contact Mr. Gilbert H. Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Overview of Benzene Regulation

This section provides background information and summarizes EPA's responses to the major public comments on the listing, health effects, and regulation of benzene. This section is intended to be an overview only. Subsequent sections and the BID contain more detailed responses to public comments.

Background

Based on studies linking occupational exposure to benzene with leukemia, EPA's general presumption that carcinogenic thresholds do not exist, the absence of a demonstrated threshold for benzene, and widespread exposure to large quantities of benzene emitted by stationary sources, EPA concluded that benzene could reasonably be anticipated to cause an increase in contracting leukemia for individuals exposed to benzene emissions from stationary sources. EPA therefore listed benzene as a hazardous air pollutant on June 8, 1977 (42 FR 29332).

Stationary sources of benzene are now estimated to emit at least 55,000 Megagrams (Mg) (about 120 million pounds) of benzene per year. The benzene sources have been divided into 12 source categories, based on technological considerations (such as control technology applicability) important in standards development. EPA decided to address the stationary source benzene problem by selecting for initial regulation five of these source categories: maleic anhydride process vents, ethylbenzene/styrene (EB/S) process vents, benzene fugitive emissions sources, benzene storage vessels, and coke oven by-product recovery plants.

EPA is collecting additional data on the remaining seven source categories to use in deciding whether or not standards development is warranted for them.

Benzene standards for four of the five source categories selected for initial regulation were proposed: maleic anhydride process vents (45 FR 26660, April 18, 1980); EB/S process vents (45 FR 83448, December 18, 1980); benzene storage vessels (45 FR 83952, December 19, 1980); and benzene fugitive emissions sources (46 FR 1165, January 5, 1981). The Agency intends to promulgate standards for benzene fugitive emission sources and propose standards for the fifth source category, coke by-product plants, in separate notices. In a third notice the Agency is withdrawing the proposed standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels, based on the conclusion that both the benzene health risks to the public from these source categories and potential reductions in health risks achievable with available control techniques are too small to warrant Federal regulatory action under section 112.

Summary of Responses to Major Comments

The primary comment received on the proposed standards was that benzene should not have been listed as a hazardous air pollutant. Commenters argued that benzene did not meet the criteria for listing under section 112 because they believe the health hazard posed by ambient levels of benzene is negligible, if not zero. Specifically, commenters, while generally agreeing with EPA that epidemiological studies have shown that a causal relationship exists between occupational benzene exposure and leukemia, maintained that the relationship had not been demonstrated at the much lower levels of benzene characteristic of the ambient air. In contending that EPA's nonthreshold presumption has been applied inappropriately in the case of benzene, commenters cited the lack of direct evidence that ambient levels pose leukemogenic risks as well as benzene research data and theoretical considerations compatible with the presence of a carcinogenic threshold for benzene.

Commenters asserted that the absence of data demonstrating that benzene reacts chemically with DNA supports the theory that benzene is likely to cause cancer by other than a direct genetic mechanism (the production of a transformed cell by direct interaction of a benzene molecule and the cellular genetic material). The nongenetic, or epigenetic, theory holds that such carcinogens must be present in sufficient quantities to induce toxic injury to the target tissue before cancer can occur. At levels below that required to cause "injury," body defense mechanisms are capable of protecting the tissues from a carcinogenic insult.

In support of a threshold for benzene, commenters maintained that benzene-induced leukemia was in most, if not all, cases preceded by evidence of injury to the blood-forming system (anemia, cytopenia, etc.). Commenters argued that because thresholds (10 to 35 ppm) exist for such effects, benzene exposure below these thresholds should not pose carcinogenic risks. Similarly, commenters cited epidemiological studies that did not show a positive correlation between benzene exposure and leukemia, as support for a risk threshold.

The EPA recognized at the time of listing that benzene at ambient levels, as with most other carcinogens, had not been demonstrated by epidemiologic studies to cause leukemia. The epidemiological methods that have successfully revealed associations between occupational exposure and cancer for substances such as benzene, asbestos, vinyl chloride, and ionizing radiation are not readily applied to the ambient environment with its increased number of confounding variables, a more diverse and mobile exposed population, a lack of consolidated medical records, and an almost total absence of historical exposure data. Given such uncertainties, EPA considers it improbable that any ambient association, short of a relationship of epidemic proportions or large increases in an extremely rate form of cancer, can be detected epidemiologically with any reasonable certainty.

Further, EPA agrees with the observations of the National Academy of Sciences (NAS) (*1*):

> In considering the possibility of thresholds for carcinogenesis, it is important to understand that there is no agent, chemical or physical, that induces a form of cancer in man that does not occur in the absence of that agent. In other words, when there is exposure to a material, we are not starting at an origin of zero cancers. Nor are we starting at an origin of zero carcinogenic agents in our environment. Thus, it is likely that any carcinogenic agent added to the environment will act by a particular mechanism on a particular cell population that is already being acted on by the same mechanism to induce cancers. This reasoning implies that only if it acted by a mechanism entirely different from that already operating on the tissue could a newly added carcinogen show a threshold in its dose response curve.

This view is consistent with evidence that any exposure may produce a change in the genetic material that can lead to cell transformation and that cancers may arise from a single transformed cell.

In addition to the support for a nonthreshold hypothesis, EPA notes the problems inherent in attempting to identify and to quantify real or practical carcinogenic thresholds. In this regard, EPA concurs with the NAS that theoretical evidence for the existence of carcinogenic thresholds must be tempered by the knowledge that the exposed human population is a "large, diverse, and genetically heterogeneous group exposed to a large variety of toxic agents. Genetic variability to carcinogenesis is well documented, and it is also known that individuals who are deficient in immunological competence (for genetic or environmental reasons) are particularly susceptible to some forms of cancer." (*1*)

For these reasons, EPA has taken the position, shared by other Federal regulatory agencies, that in the absence of sound scientific evidence to the contrary, carcinogens should be considered to pose finite health risks at any nonzero exposure levels. This nonthreshold presumption is based on the view that as little as one molecule of a carcinogenic substance may be sufficient to transform a normal cell into a cancer cell. Evidence is available from both the human and animal health literature that cancers may arise from a single transformed cell. Mutation research with ionizing radiation in cell cultures indicates that such a transformation can occur as the result of interaction with as little as a single cluster of ion pairs.

In the decision to list benzene under section 112 EPA found no reason to believe that the nonthreshold presumption did not apply to benzene. After reviewing the public comments, EPA believes that although they provide a comprehensive discussion of the scientific and theoretical support for a carcinogenic threshold for benzene, the evidence is inadequate to support a conclusion that ambient levels of benzene are without carcinogenic risk.

The EPA did not at listing and does not now believe that information such as the benzene exposure levels estimated from "negative" epidemiological studies can be regarded as the equivalent of no-effect levels. Because of the problems and uncertainties inherent in the design and conduct of such studies, they do not support the conclusion that the absence of a statistical correlation demonstrates the absence of a hazard.

While the epigenetic mechanism offers a possible explanation for the way in which cancers could arise in the absence of direct interaction with genetic material, this theory has not been substantiated by experimental evidence nor has applicability to the specific case of benzene been established beyond largely theoretical grounds.

The EPA does not agree with industry's conclusion that the absence or nondetection of covalent bonding with DNA indicates that benzene cannot directly interact with the genetic material. Evidence exists that benzene at levels as low as 1 to 2.5 ppm significantly increases chromosomal aberrations. (*2*) (*3*) Similarly, EPA does not regard as conclusive the evidence provided by commenters that leukemia or other adverse health effects do not occur in the absence of overt signs of blood toxicity. Again, studies are available demonstrating benzene-induced chromosomal aberrations following exposure to benzene at levels below those advanced as thresholds for blood toxicity.

Finally, commenters have argued that, below the benzene levels required to "injure" the blood-forming tissues, the body's defense mechanisms protect the tissues from low-level carcinogenic insults. EPA is not persuaded that such mechanisms are 100 percent effective. In addition, although the commenters do not regard chromosomal aberrations as evidence of blood toxicity, the presence of these effects indicates that benzene or an active metabolite has been able to overwhelm the protective mechanisms and enter the cellular nucleus.

In summary, EPA continues to believe that the nonthreshold presumption should apply in the case of benzene and that exposure to benzene via the ambient air should be regarded as posing carcinogenic risks. Although EPA recognizes that this finding is not without uncertainty, the Agency believes that it is consistent with the mandate of Section 112 requiring the protection of public health against air pollutants that "may reasonably be anticipated" to cause or contribute to the health effects of concern.

After reviewing the public comments, EPA also continues to believe that benzene emissions from some stationary sources represent a significant risk of leukemia to exposed populations. This judgment is based on the documented evidence that benzene is a leukemogen, on the magnitude of benzene emissions from stationary sources to the ambient air, on the observed and estimated ambient concentrations, on the proximity of large populations to emitting sources, on the estimates of the health risks to the exposed populations, and consideration of the uncertainties associated with quantitative risk estimates (including the effects of concurrent exposures to other

substances and to other benzene emissions).

Section 112 provides for the delisting of benzene only if it is found that benzene is clearly not a hazardous air pollutant. EPA judges the evidence, including that submitted by commenters, to be insufficient to support a conclusion that ambient levels of benzene do not pose carcinogenic risks or that the risks posed by ambient benzene emitted by stationary sources are insignificant. In conclusion, EPA continues to regard the listing of benzene on June 8, 1977, as appropriate and considers delisting at this time inappropriate.

A second major comment on the proposed standards contends that the individual source categories covered do not pose a significant health risk and, further, are already controlled adequately. In fact, several plants have installed controls or shut down since the basic information for standards development was obtained and, indeed, since standards were proposed. EPA has revised its emissions and health risk estimates based on the latest emissions information provided by the industry and has included in these estimates consideration of current controls. EPA has also adjusted its unit risk factor in response to public comments and is using a more detailed human exposure model. EPA has reassessed this new information for maleic anhydride process vents, EB/S process vents, benzene storage vessels, and benzene fugitive emission sources and concludes that in light of the health risks and potential reductions of these four source categories, only benzene fugitive emissions warrant Federal regulations under Section 112. Details regarding the new information and conclusions are included in the separate notices for these source categories.

Public Participation

The Science Advisory Board reviewed draft documents in December of 1977 on EPA's assessment of the health effects at low-level exposure, the extent of human exposure, and the estimation of population risks. Public comments were solicited at proposal of the maleic anhydride standard (April 18, 1980; 45 FR 26660) on the health effects, listing, and regulation of benzene. A public hearing was held on August 21, 1980, in Washington, D.C., to provide interested parties an opportunity for oral presentation of data, views, or arguments on the health effects, listing, and regulation of benzene. The hearing was open to the public, and each attendee was given an opportunity to comment. The public comment period was from April 18, 1980, to November 6, 1980.

Comments have been considered and changes made to the analysis and conclusions, where appropriate. Major comments received on the health effects, listing and regulation of benzene, and EPA's responses are summarized in this preamble. More detailed responses to the major comments and responses to the other comments not addressed in this preamble are contained in "Response to Public Comments on EPA's Listing of Benzene Under Section 112," EPA–450/5–82–003. Comments are identified by the docket item number in parentheses.

Listing of Benzene Under Section 112

The EPA listed benzene as a hazardous air pollutant based on "[s]cientific reports [which] strongly suggest an increased incidence of leukemia in workers exposed to benzene" (42 FR 29332, June 8, 1977). These reports included a review of benzene by NAS, (*4*) updated criteria published by the National Institute for Occupational Safety and Health (NIOSH), (*5*) and a proposal by the Occupational Safety and Health Administration (OSHA) for a revision downward of the existing workplace standard for benzene (42 FR 22516, May 3, 1977, and 42 FR 27452, May 27, 1977). While acknowledging that ambient exposure to benzene normally occurs at levels "substantially lower than those to which affected workers were exposed," EPA maintained that "there is reason to believe that ambient exposures may constitute a cancer risk and should be reduced" (42 FR 29332, June 8, 1977).

At the time of listing, EPA announced that it would review the scientific data to determine the health risks from exposure to ambient levels of benzene and invited public participation. The resulting EPA reports—"Assessment of Health Effects of Benzene Germane to Low Level Exposures," (*6*) "Assessment of Human Exposures to Atmospheric Benzene," (*7*) and "Carcinogen Assessment Group's Report on Population Risk to Ambient Benzene" (*8*)—form the basis for the majority of the public comments directed at the listing decision.

Commenters, largely from potentially affected industries and trade associations, argued that the listing of benzene was ill-timed, unnecessary, and unjustified. The main thrusts of these arguments are that EPA failed to develop an adequate record in advance of listing and that the record subsequently prepared does not demonstrate that benzene at the levels encountered in the ambient air warrants designation as a hazardous air pollutant.

Timing of Benzene Listing Decision

Many commenters though benzene was listed improperly, or at least prematurely, citing what they believed to be an inadequate record (OAQPS–79–3 [Part I] IV–D–13 [Part II] IV–F–1, IV–F–9; A–79–49 IV–D–9, IV–D–11; A–79–27 IV–D–19) and EPA's reliance on a proposed policy regarding airborne carcinogens (44 FR 58642; October 10, 1979) (A–79–27 IV–D–8, IV–D–25, IV–D–26; OAQPS–79–3 [Part I] IV–D–1, IV–D–11; A–79–49 IV–D–7).

The Clean Air Act requires EPA to list under section 112 substances judged to cause or contribute to air pollution "which may reasonably be anticipated to result in an increase in mortality or an increase in serious, irreversible or incapacitating, reversible illness" [section 112(a)(1)]. EPA based the decision to list benzene on a growing consensus in the scientific and regulatory community, evidenced by reports by NAS (*4*) *and NIOSH* (*5*) and proposed regulations issued by OSHA (42 FR 27452; May 27, 1977) that benzene was causally linked to the occurrence of leukemia in occupationally exposed populations. In EPA's view, leukemia clearly meets the criterion described in section 112 as resulting in an increase in mortality or "serious, irreversible or incapacitating, reversible illness."

The EPA's judgment that benzene present in the ambient air may "reasonably be anticipated" to pose a significant health hazard to the general population relied on two arguments advanced in the listing notice: first, that benzene was released to the air in 100 million pound quantities annually to which "large numbers of people are routinely exposed" and, second, that EPA had "adopted a regulatory policy which recognizes that some risk exists at any level of exposure to carcinogenic chemicals" (42 FR 29332; June 8, 1977). The latter referred to the "Interim Procedures and Guidelines for Health Risk and Economic Impact Assessments of Suspected Carcinogens" published by EPA May 25, 1976 (41 FR 21402).

Based on the above, EPA believes that the decision to list benzene was fully informed, timely, and therefore appropriate. The subsequent assessments of low-level exposure and carcinogenic risk were intended, as indicated in the listing notice, for use in "determining which sources of benzene emissions must be controlled, and the extent of control needed" (42 FR 29333, June 8, 1977). To the extent that these assessment documents addressed the

criteria for listing benzene under section 112, they have affirmed EPA's decision.

The EPA rejects the contention that the delay between listing and the proposal of emission standards for benzene sources suggests that EPA lacked the scientific evidence to justify the June 1977 listing. EPA's assessments of the health effects of low-level exposure,(6) the extent of human exposure,(7) and the estimation of population risks (8) were submitted for external review by EPA's Science Advisory Board in December 1977 and publicly released in September 1978, June 1978, and January 1979, respectively. The first emissions standard for benzene sources was not proposed until April 18, 1980 (45 FR 26660). Proposal was not delayd by "the evidence" for listing but rather the complex task of developing specific national emission standards for each source category.

Several commenters (A–79–27–IV–D–8, IV–D–25, IV–D–26; A–80–14–IV–D–4, IV–D–11; OAQPS–79–3 [Part I] IV–D–1, IV–D–11; A–79–49–IV–D–7; OAQPS–79–3 (Part II–IV–D–5) maintained that the listing and rulemaking proceedings for benzene were premature, arguing that they were based on a proposed policy regarding airborne carcinogens (44 FR 58642; October 10, 1979).

Neither the listing of benzene nor the proposed or promulgated standards are based on the proposed airborne carcinogen policy. They are based on section 112. As described above, EPA is persuaded that the decision to list benzene under section 112 was neither premature nor in excess of the Agency's legal authority.

Health Effects of Benzene

Public comments on the EPA report "Assessment of Health Effects of Benzene Germane to Low-Level Exposure" focused on areas of the benzene health literature relevant to evaluation of human health risks from ambient exposure. These include effects on reproduction and development (embryotoxicity and teratogenicity), effects on the cellular genetic material (mutagenicity and chromosome breakage), and carcinogenicity. The basis for listing benzene as a hazardous air pollutant is carcinogenicity. However, since comments were received on the report's discussions on the other effects, they are included for completeness.

Reproductive and Teratogenic Effects. EPA concluded in the benzene health assessment report that the health literature was inconclusive regarding potential effects of benzene on human reproduction and the fetus. Some commenters took a stronger position, asserting that no evidence was available linking benzene with reproductive or teratogenic effects (OAQPS–79–3 [Part I]–IV–D–9, IV–D–13; [Part II]–IV–D–22, IV–F–1, IV–F–8).

The EPA agrees with the commenters that the available data do not implicate benzene as a potential teratogen or embryotoxin in test species. The risks of adverse fetal developmental or reproductive effects, however, have not been studied adequately. No state-of-the-art multiple generation reproduction studies involving benzene have been done, without which it will not be possible to determine the levels at which benzene would have no observed effect.

From the available data concerning adverse reproductive effects of benzene in humans, it is *not* possible to conclude that *no* adverse human reproductive consequence results from ambient levels of benzene, since no well-designed and executed epidemiological studies have been conducted. It is not known if ambient levels of benzene have effects on the many areas of human reproduction, such as the processes of spermatogenesis and changes in menstrual cycle. Until such possibilities are explored, EPA believes that the evidence for benzene-induced reproductive effects in humans must be regarded as inconclusive.

Chromosomal Effects. Although commenters did not disagree with EPA's conclusion that benzene can cause chromosome breakage in humans, (6) they were divided on the exposure levels at which such damage occurs and on the implications of the observed changes (OAQPS–79–3 [Part I] IV–D–8, IV–D–13, [Part II] IV–F–1, IV–F–8; A–79–27, IV–D–27; A–79–49, IV–D–9). Several commenters asserted that these effects result only from high exposures, in excess of 10 ppm (A–79–27, IV–D–27, A–79–49, IV–D–9, OAQPS–79–3 [Part I] IV–D–13), and that "no reliable evidence" exists to link subclinical benzene exposure to chromosome aberrations or to relate the observation of chromosome breakage with human leukemia (OAQPS–79–3 [Part I] IV–D–13, [Part II] IV–F–1, F–8; A–79–49 IV–D–9).

Conversely, one commenter challenged EPA's conclusion that a dose-dependent relationship between benzene exposure and chromosome damage had not been demonstrated, citing a study by Picciano (2) in benzene-exposed workers, and maintained that this study documented chromosomal effects at benzene exposure levels at and below 2.5 ppm (OAQPS–79–3 [Part I] IV–D–8).

The EPA does not agree that the data on human cytogenetic effects support a conclusion that benzene-induced chromosome damage occurs only after "excessive exposure." As described in the health assessment document, studies are available that relate increased chromosome breakage to benzene exposure well below the OSHA standard of 10 ppm time-weighted average (TWA). (3) (9)

With respect to a dose-response relationship, EPA agrees that the Picciano study indicates a dose-dependent relationship between exposure to benzene and the amount of chromosome damage. As noted in the EPA health assessment document, however, "[t]here is no correlation, * * *, between the degree or length of exposure, *the clinical symptons*, and persistence or extent of chromosomal aberrations" [emphasis added]. (6) EPA believes that this study and the study by Kilian and Daniel (3) are appropriately considered evidence of an assocation between benzene exposure and chromosome breakage and that the lowest benzene levels (1.0 to 2.5 ppm) where significant increases in breakage were found are considered properly to reflect exposures below those associated with clinical symptons of toxicity.

EPA also agrees that no direct evidence of a casual linkage between chromosomal aberrations and leukemia exists. EPA remains concerned, however, by the frequency of reports correlating chromosome abnormalities with cancer incidence. In addition to benzene workers and leukemia, this association has been pointed out in atomic bomb survivors with leukemia, (10) in uranium miners with lung cancer, in vinyl chloride workers with liver cancer, in liminous dial painters with bone cancer, and in individuals developing visceral cancers after methotrexate treatment for psoriasis. (11)

Carcinogenicity. Commenters did not challege EPA's conclusion that "there is substantial epidemiological evidence that benzene is a human leukemogen." (8) A number of commenters, however, disagreed with EPA's conclusion that benzene posed increased leukemia risk at the levels present in the ambient air. EPA addresses these comments below in "Health Issues Relevant to Benzene Listing Decision."

One commenter took issue with EPA's conclusion that "there is no convincing evidence that benzene causes neoplasias, including leukemia, in animals." (6) The commenter cited two studies, one by Maltoni and Scarnato

(*12*) and one by Snyder et al. (*13*) demonstrating benzene-induced tumors in rodents (OAQPS–79–3 [Part I] IV–D–8).

The carcinogenicity studies on benzene in animals reported by Maltoni and Scarnato (1979) (*12*) and Snyder et al. (1980) (*13*) support the comment that a positive tumorigenic effect of benzene is evident from these studies. The results of these studies are addressed in the following section.

Health Basis for Listing

As previously discussed, the Agency based the decision to list benzene on a growing consensus in the scientific and regulatory community, supported by reports by NAS, (*4*) NIOSH, (*5*) and emergency temporary standards issued by OSHA (42 FR 22516, May 3, 1977) that benzene was causally related to the occurrence of leukemia in occupationally exposed populations.

Although the association between human leukemia and benzene exposure is only one of several adverse health effects attributed to benzene, the serious consequences of this disease and the uncertainties regarding the existence of any no-effect levels of exposure combined to make it the basis for the decision to list. EPA's health basis for listing rested primarily on retrospective studies in occupationally exposed human populations. Of these, three reports documenting an association received greatest emphasis: Infante et al.,(*14*) Aksoy et al., (*15*) and Ott et al. (*16*) In the interval since listing, animal data have become available that further support a causal relationship. (*12*) (*13*)

Commenters critical of EPA's decision to list benzene argued that these studies suffered from design and methodological flaws, the correction of which would tend to greatly reduce if not eliminate the observed association. Several commenters also thought EPA had misinterpreted the study results and ignored other well-conducted studies that reached significantly different conclusions.

Epidemiological Studies. The work by Infante et al., a retrospective cohort mortality study undertaken by NIOSH, was reported initially in 1977 with a completed follow up published in 1981. (*17*) The study found a greater than fivefold excess risk of leukemia among workers exposed to benzene during the period of 1940 to 1949 in the "Pliofilm" (rubber hydrochloride) production industry.

One commenter stated that the Infante work was "seriously flawed and largely discredited," citing testimony from the public hearings on the OSHA benzene standard (*18*) and the Supreme Court's plurality decision on the OSHA standard (*19*) (OAQPS–79–3 [Part II] IV–D–5; A–79–27 IV–D–8). More specifically, commenters asserted that the study was flawed in two respects: the exposed cohort was improperly defined; and the exposure levels assumed were erroneous (OAQPS–79–3 [Part I] IV–D–13, [Part II] IV–D–5, IV–F–1, IV–F–9; A–79–27 IV–D–8; A–79–49 IV–D–9; A–80–14 IV–D–4, IV–D–16).

Though EPA recognizes that the Infante et al., study has weaknesses, EPA believes that the characterization of the study as "seriously flawed and largely discredited" is inaccurate. Although the commenter does not provide explanation of his criticism beyond references to the OSHA benzene rulemaking, his remarks imply that the study is invalid due to erroneous reporting of the exposure concentrations. EPA acknowledges, as did the authors of the study, that the historical exposure levels cannot be determined with certainty. This fact, however, is irrelevant to the study's conclusion that exposed workers experienced a fivefold excess risk of leukemia over the general population.

Commenters thought the cohort selected for the study inappropriately excluded certain mechanical and "dry side" workers as well as an unknown number of workers who left the plant's employment before 1944.

The issue of cohort definition in Infante et al. was discussed in subsequent publications by the authors (*20*) (*21*) as well as the OSHA benzene rulemaking (43 FR 5918, February 10, 1978). The authors argue that "dry side" workers "were never intended for inclusion in the cohort following discussion with company personnel indicating there was no benzene exposure on the dry side" (43 FR 5927). Subsequent reports of benzene levels (three sample points) on the "dry side" by the University of North Carolina (*22*) were regarded as inadequately detailed "to permit a valid interpretation." (*20*) The authors also contend that maintenance personnel (pipefitters, mechanics, etc.) were appropriately excluded from the cohort "because company records did not show which men had responsibilities in pliofilm production." (*20*) Workers who left employment prior to 1944 "could not be included because their personnel records were not in a retrievable form." (*20*)

The EPA considers the rationale for the selection of the Infante et al. cohort appropriate. EPA notes further that, as described in the completed follow up by Rinsky et al. as well as expert testimony offered by Dr. Marvin Sakol at the OSHA benzene hearings, (*18*) the strict cohort definition excludes several additional cases of leukemia that "support further the notion that there existed a causal link between benzene exposure in those facilities and the occurrence of leukemia." (*17*)

Commenters also contended that the benzene concentrations to which the workers were exposed were much higher than assumed by EPA, supplying information from studies indicating that the workers could have been exposed to levels of 100 to 1,000 ppm in the 1940's and as high as 355 ppm in the 1970's with a mean of 30 ppm.

Rinsky et al. (*17*) provide a thorough discussion of the available information on the benzene levels to which workers may have been exposed in the subject facilities during the periods studied. The authors concluded that "for the most part, employees' 8-hour time-weighted averaged exposures were within the recommended [occupational] standard in effect at the time. However, as is characteristic of industrial processes, there were occasional excursions above these limits." EPA concludes that, while intermittent levels may have approached the values suggested by the commenters, the range of occupational standards for the periods studied (100 to 10 ppm) appears reasonable as an estimate of the chronic exposure pattern. In this regard, EPA agrees with the recent conclusion of the Benzene Work Group of the International Agency for Research on Cancer (IARC) that "the excessive mortality from myelogenous and monocytic leukemia had occurred among workers with occupational exposure to benzene that was generally within accepted limits," recognizing that "the possible contribution of the occasional excursions in exposure and of the employment of some workers in other areas of the plant must be noted; and * * * May have made some contribution to the observed excess in mortality from leukemia." (*23*)

Aksoy et al. studied the incidence of leukemia and other diseases among workers occupationally exposed to benzene in the Turkish shoeworking industry. (*24*) (*25*) (*26*) Based on case ascertainment by contact with medical care and comparison of leukemia incidence in the exposed population to estimates for the general population of Western nations, Aksoy et al. found a two fold exces leukemia risk among shoeworkers with chronic benzene exposure.

Although commenters generally agreed that the study was of value "in reaffirming, * * * that prolonged exposures to high concentrations of

benzene result in serious blood disorders including a small number of leukemias" (OAQPS–79–3 [Part II] IV–F–1, IV–F–9), several specific criticisms suggested that the excess risk observed was exaggerated. Two commenters argued that Aksoy et al. relied on inappropriate figures (6 per 100,000) for the background leukemia incidence and that when a more reasonable estimate derived from the experience of the Eurpean Standard Population (8 to 14 per 100,000) was used, the study no longer shows an excess incidence among the exposed workers (OAQPS–79–3 [Part I] IV–D–13 [Part II] IV–F–1, IV–F–9; A–79–49 IV–D–9). One commenter expressed concern that the age distribution of exposed workers was not available and speculated that the margin for error in the "official count" used as the denominator of the shoeworking population (28,500) was "probably substantial" (OAQPS–79–3 [Part II] IV–F–1, IV–F–9).

EPA agrees that Aksoy's choice of the 6-per-100,000 background leukemia incidence is subject to criticism since it is not easily attributed to the Turkish rural population. It is also reasonable that the "official count" of 28,500 shoeworkers may be an underestimate and therefore overestimates the excess leukemogenic risk in the exposed population. It is equally likely, however, that Aksoy's methodology leads to an underestimate of the excess risk. First, only leukemia cases of which the author was directly aware as a medical practitioner were counted in the study. As Aksoy testified before OSHA, "undoubtedly there were other additional patients among shoeworkers who were not included in our study." (*18*) Second, as EPA's health assessment points out, "the distribution of cases reported by Aksoy et al. strongly differs from that of leukemia in the general population. If the relative incidence were computed solely for acute myeloblastic leukemia and its variants [the forms of leukemia associated with benzene exposure], a magnification of the risk in benzene-exposed shoeworkers would be observed." (*6*) Finally, Aksoy has also testified that rural leukemia incidence in Turkey may be on the order of 3 per 100,000, or half of what he had estimated originally.(*18*) This fact would also increase the calulated excess risk.

Concerning the age distribution of the shoemaker population, the limited age information available led EPA to incorporate an age adjustment factor in the Agency's risk assessment. On the basis of better information on the age stucture of Turkey's male population, (*27*) EPA now believes this adjustment was unnecessary and has revised the unit risk derivation accordingly.

Ott et al. (*16*) reported long-term mortality patterns and associated benzene exposure for a cohort of 594 chemical manufacturing workers. Three cases of leukemia were observed where 0.8 was expected, an excess risk of 3.75. The finding was statistically significant ($p=0.047$) in a one-tailed test of significance.

One commenter criticized the statement in EPA's health assessment (*6*) that excess leukemia incidence observed in the Ott et al. study was only of "borderline" statistical significance. The commenter noted that "[s]ince the p value observed (0.047) is less than the p value (0.050) commonly used to determine statistical significance, there is no basis for considering the value borderline" (OAPQS 79–3 [Part I] IV–D–8). Other commenters argued that the study should be appropriately regarded as "inconclusive" (OAQPS 79–3 [Part I] IV–D–9, IV–D–13, [Part II] IV–D–22, IV–F–1, IV–F–9; A–79–49 IV–D–9, IV–F–2). One commenter remarked that while the cases were too few to draw "solid statistical conclusions," the Ott et al. study was the "best documented study of chronic exposures to benzene in the literature to date" (OAQPS 79–3 [Part II] IV–F–1, F–9).

Commenters also contended that the exclusion of one decedent whose leukemia was identified as a "significant other condition" rather than the cause of death eliminated the significance (QAQPS 79–3 [Part I] IV–D–13). One commenter asserted that Ott et al. applied an "inappropriate one-tailed [statistical] test" to determine significance and that the use of an appropriate test (two-tailed) did not reveal a significant association between the leukemia cases and exposure to benzene (OAQPS 79–3 [Part I] IV–D–13).

The presence of confounding exposures to other potential carcinogens was also noted by commenters as evidence that the study should not be viewed as conclusive of a benzene-leukemia association. The same commenters noted that the cases of leukemia occurred in workers exposed to lower benzene levels (2 to 9 ppm) than those encountered by many other individuals in the study population (OAQPS 79–3 [Part I] IV–D–13, [Part II] IV–F–1, VI–F–9).

While EPA does not view the Ott et al. study, taken alone, as conclusive evidence of an association between low-level (2 to 9 ppm) occupational exposure to benzene and leukemia, the Agency believes that this work, combined with other findings in the benzene health literature, serves to reinforce the public health concerns regarding benzene exposure.

EPA does not agree that the use of "borderline" in describing the significance of the Ott et al. study is inappropriate since the value calculated (0.047) was very close to the predetermined limit (0.050) chosen for the test. EPA does agree that the test, as constructed, supports a finding of significance.

EPA disagrees that the use of a "two-tailed" test for significance would be more appropriate than the one-tailed test employed by Ott et al. The hypothesis to be tested in that benzene exposure increases the leukemia risk, not that risk may increase or decrease. The benzene health literature does not support a finding that benzene exerts a protective influence on exposed individuals.

Omitting from the study the individual for whom leukemia was not the immediate cause of death would not, in EPA's opinion, be an appropriate change. In view of the recognized causal relationship between benzene and nonlymphatic leukemias, EPA believes that a case of myelogenous leukemia, such as this, should not be ignored.

EPA does not view the extent of confounding exposures in Ott et al. as severe. The authors did exclude from their analysis persons known to have been exposed to levels of arsenicals, vinyl chloride, and asbestos, all of which have been associated with human health effects. This exclusion eliminated 53 persons from consideration including one leukemia victim. The remaining substances, which include the suspect carcinogen vinylidene chloride, have not been shown to be associated with a leukemia risk in either man or animals. Therefore, inclusion of such exposed persons would not be likely to affect the target organ site for benzene in terms of increased risk.

According to the authors' testimony before OSHA, the "low levels of potential benzene exposure relative to other employees in the cohort . . . made a retrospective assessment of the possible relationship to benzene exposure very judgmental." (*18*) EPA, while recognizing this uncertainty, agrees with the reservation expressed by OSHA in its benzene rulemaking that "because of the small population size as well as the possibility of sensitivity of those individuals developing leukemia, it cannot be concluded that these deaths are not caused by benzene exposure" (43 FR 5928).

Commenters cited other epidemiological studies, notably the work of Thorpe, (*28*) for which no correlation between leukemia and benzene exposure was demonstrated (OAQPS–79–3 [Part I] IV–D–9, IV–D–13, [Part II] IV–F–1, IV–F–9; A–79–27 IV–D–24, IV–F–1; A–79–49 IV–D–9, IV–F–2). The Thorpe study found "no excess incidence of leukemia among petroleum workers exposed to benzene levels estimated to range up to 20 ppm" (OAQPS–79–3 [Part I] IV–D–13).

EPA believes that deficiencies in the Thorpe study preclude a judgment that exposure to benzene below 20 ppm poses no risk of leukemia. The author of this study dwells on the shortcomings of the work, the most important of which are that (1) quantitative determinations of the extent of exposure could not be done, (2) follow up of members of the cohort was inadequate, and (3) problems existed with verifying the leukemia diagnosis.

Followup was left to each unit (plant) separately. Since the author did none of it, the follow up was poor. Many units had no mechanisms by which to notify the plant of the death of an annuitant and, where notification was made, often no cause of death was reported to the company. Cases reported among annuitants were included, although possible underreporting in the group was recognized. No mention was made concerning follow up efforts on former employees who did not qualify for an annuity. Unfortunately, no table on completeness of ascertainment of vital status was given.

Other problems with this study involve the questionable practice of reporting on the pooled results of a study of eight separate and perhaps considerably different plants. A significant risk that may be present in one or more of the plants could have been obscured by the inclusion of populations of nonexposed individuals. Additionally, no consideration of latent factors was presented; no effort was made by the author to require a minimum time since onset of employment of individuals in the study or to provide even cause-specific mortality by time since first employment. Furthermore, the study has been criticized by Brown (*29*) with respect to factors relating to underreporting of leukemia in the study population.

Animal Studies. EPA originally concluded in the benzene health assessment that "there is no convincing evidence that benzene causes neoplasias, including leukemia, in animals."(*6*) One commenter submitted that two animal studies, reports by Maltoni and Scarnato(*12*) and Synder et al.(*13*) had become available demonstrating benzene-induced tumors in rodents (OAQPS–79–3 [Part I] IV–D–8).

EPA agrees that the studies referenced support the finding of a positive tumorigenic effect of benzene in rodents. The study by Maltoni and Scarnato indicated an increased incidence of Zymbal gland carcinomas, mammary gland carcinomas, and leukemia in benzene-treated Sprague-Dawley rats. Snyder et al. observed a higher occurrence of hematopoietic neoplasms, bone marrow hyperplasia, and splenic hyperplasia in benzene-treated C57BL mice. The hematopoietic neoplasms were categorized as lymphocytic lymphoma with thymic involvement, plasmacytoma (myeloma), and leukemia with a hematocytoblast apparently as the predominant cell type. The finding of a tumorigenic effect of benzene in other mammalian species serves to strengthen the concern over benzene's effects on human populations.

Health Issues Relevant to Benzene Listing Decision

EPA listed benzene as a hazardous air pollutant based on evidence linking occupational benzene exposure with leukemia and on the knowledge that large numbers of people are exposed to and, therefore, may be at risk from, benzene emitted into the ambient air by a variety of stationary sources. This rationale assumes that (1) it is reasonable to conclude that a causal relationship continues to exist at the significantly lower exposure levels characteristic of the ambient air, and (2) that the magnitude of the relationship warrants efforts to reduce human exposure.

A number of commenters took issue with EPA's judgment, arguing that an exposure threshold for benezene-induced leukemia exists below which there is no health risk and that, even granting an association with leukemia at ambient levels, the magnitude of the health risks to exposed populations is negligible. (Due to the number of commenters on these subjects, the comment numbers are not listed.) The comments focus on EPA's presumption that effect thresholds do not exist for carcinogens (the nonthreshold hypothesis) and the methodology used by EPA's Carcinogen Assessment Group (CAG) in deriving quantitative estimates of benzene leukemogenic risks. A summary of public comments addressing the issue of a carcinogenic threshold for benzene follows the statement of EPA's position on carcinogenic thresholds.

EPA's Position on Carcinogenic Thresholds (Nonthreshold Hypothesis). In evaluating the public health hazards associated with exposure to known and potential carcinogens, EPA has maintained that, in the absence of sound scientific evidence to the contrary, such substances must be considered to pose some finite cancer risk at any exposure level above zero (41 FR 21402, May 25, 1976; 44 FR 58642, October 10, 1979; 44 FR 39858, July 6, 1979). OSHA (45 FR 5002, January 22, 1980), the Consumer Product Safety Commission (CPSC), the Food and Drug Administration (FDA), the Food Safety and Quality Service, and the President's Regulatory Council (44 FR 60038, October 17, 1979), among others, have shared this conviction.

Support for the nonthreshold hypothesis for carcinogens dervices from both scientific and practical considerations. As summarized by the Interagency Regulatory Liaison Group (IRLG): "[t]he self-replicating nature of cancer, the multiplicity of causative factors to which individuals can be exposed, the additive and possibly synergistic combination of effects, and the wide range of individual susceptibilities work together in making it currently unreliable to predict a threshold below which human population exposure to a carcinogen has no effect on cancer risk" (44 FR 39876).

The mechanism by which a carcinogen acts is of particular importance in postulating whether or not an effect threshold exists. NAS has observed:

> Whether or not a particular effect follows a dose-response relationship that has a threshold depends entirely on the mechanism of the effect. Many effects have thresholds. For example, the gastrointestinal-radiation syndrome, acute drug toxicity, and radiation or drug control of some tumors all have dose-response curves that show thresholds. The curves are sigmoid, and below a particular dose there is a zero probability of producing the effect, because the effect requires many independent events and will not occur until the number of such events exceeds some critical value. The gastrointestinal-radiation (or drug) syndrome is a case in point. An animal will not die until the number of intestinal crypt cells that have been killed exceeds a value that is critical to the integrity of the organ. Any radiation or drug dose that kills fewer cells than this critical number can be considered to be safe (at least for this one syndrome).
>
> We are used to thinking in terms of thresholds and sigmoid dose-response curves. For example, if it costs $4,000 to buy an automobile, we do not imagine that we will have a 50% chance of buying the same vehicle for $2,000. If 100 aspirin tablets constitute a lethal dose, we do not calculate that we will have a 1% chance of dying if we

swallow a single tablet. Because we know the mechanisms underlying these events, we expect thresholds to the dose-response curves, and indeed they are evident.

However, other effects may well *not* have threshold dose-effect relationships. If an effect can be caused by a single hit, a single molecule, or a single unit of exposure, then the effect in question cannot have a threshold in the dose-response relationship, no matter how unlikely it is that the single hit or event will produce the effect. Mutations in prokaryotic and eukaryotic cells can be caused by a single cluster of ion pairs which were produced by a beam of ionizing radiation. We would expect that mutations can be caused by a single molecule or perhaps group of molecules in proximity to the DNA. The necessary conclusion from this result is that the dose-response relationship for radiation and chemical mutagenesis cannot have a threshold and must be linear, at least at low doses.

It is one step further to correlate mutagenesis with carcinogenesis. Nevertheless, the evidence is strong that there is a close relationship between the two [references].

We therefore conclude that, if there is evidence that a particular carcinogen acts by directly causing a mutation in the DNA, it is likely that the dose-response curve for carcinogenesis will not show a threshold and will be linear with dose at low doses.(*1*)

Evidence for a linear-carcinogenic response at low dose comes from studies suggesting cancers may arise from the "transformation" of a single cell. (*30*)(*31*) One study observed that in women with a genetic condition that leads to their body cells being of two recognizable types, tumors are characteristically of one cell type, while normal tissues are composed of a mixture of both types. Another described experimental efforts in which transformed cells were transplanted into whole animals. Both of these observations further support the theory that cancers may arise from single cells. A single cell origin of cancers implies that the statistical form of the carcinogenic dose response relationship may be highly influenced by the extreme tail of the distribution of cell transformations with dose. As Crump points out "the effect of this is to make virtually any process of discrete events approximately linear at low dose." (*18*)

EPA's presumption that any exposure to a carcinogen poses a health risk is not intended to foreclose discussion or ignore evidence or real or practical effect thresholds for such substances. In this regard, a number of theories postulate the existence of thresholds. These include consideration of the body's defense and repair capabilities (immunosurveillance, detoxification, and DNA repair) and reports of the regression of preneoplastic lesions with the cessation of exposure. Observations of an inverse relationship between dose and the latency period for tumor expression have been proposed as evidence of practical thresholds where the dose corresponds to a latency that exceeds the individual's lifespan. Proponents also have suggested, as indirect evidence of thresholds, the carcinogenicity at high doses of certain substances for which a biological requirement exists. Threshold levels have, in addition, been inferred from "negative" epidemiological and animal studies.

While EPA agrees that the evidence for real or practical carcinogenic thresholds should play a role in hazard evaluation, the Agency is persuaded that the utility of such information in establishing "no effect" levels is seriously limited. Although protective mechanisms such as DNA repair are reasonably effective, it is generally recognized that few, if any, biological processes are 100 percent efficient (45 FR 5126, 5129). Similarly, while decreased dose could increase the *median* time-to-tumor to greater than a lifespan, the typical distribution of tumors across age groups still would result in "early" cancers arising.

Evidence for practical thresholds is also questionable. There is no reason to believe that biologically required substances, which have been found to be carcinogenic at high levels, may not pose some cancer risk at levels where they are normally found in the body. In the same way, the failure to detect a positive association in the animal bioassay or epidemiological study does not constitute evidence of a no-effect level. NAS has noted that

> * * * the observation of no positive responses does not guarantee that the probability of response is actually zero. From a statistical viewpoint, zero responders out of a population of size N is consistent at the 5% significance level with an actual response probability between zero and approximately 3/N (e.g., when N=100 and zero responders are observed, the true probability of response may be as high as 3%).(*1*)

Finally, EPA concurs with NAS that theoretical arguments for the existence of carcinogenic thresholds must be tempered by the knowledge that the exposed human population is a "* * * large, diverse, and genetically heterogeneous group exposed to a variety of toxic agents. Genetic variability to carcinogenesis is well documented (Strong), 1976, (*32*) and it is also known that individuals who are deficient in immunological competence (for genetic or environmental reasons) are particularly susceptible to some forms of cancer (Cottier et al., 1974)(*33*)." (*1*)

OSHA noted in its summary of public hearings on an occupational carcinogen policy:

> A number of witnesses testified that, even if thresholds could be established for the circumstances in which animals are exposed only to single carcinogens, this would have little or no relevance to risk assessment for humans, who are exposed to many carcinogens, either simultaneously or sequentially. Specifically, several witnesses pointed out that there is already a ralatively high incidence of cancer in the human population. Hence many individuals are already at or close to the threshold for certain processes involved in cancer development, so that incremental exposure to even small quantities of an agent that accelerates these processes would be expected to lead to an increase in the frequency of cancer. (45 FR 5135)

NAS has further elaborated:

> In considering the possiblity of thresholds for carcinogenesis, it is important to understand that there is no agent, chemical or physical, that induces a form of cancer in man that does not occur in the absence of that agent. In other words, when there is exposure to a material, we are not starting at an origin of zero cancers. Nor are we starting at an origin of zero carcinogenic agents in our environment. Thus, it is likely that any carcinogenic agent added to the environment will act by a particular mechanism on a particular cell population that is already being acted on by the same mechanism to induce cancers. This reasoning implies that only if it acted by a mechanism entirely different from that already operating on the tissue could a newly added carcinogen show a threshold in its dose-response curve. (*1*)

In summary, EPA's position has been that the nonthreshold hypothesis is, for carcinogens, a reasonable and appropriate presumption that must be overcome by sound scientific evidence before any exposure to such substances can be concluded to be without health risk. At the same time, however, EPA regards relevant evidence of the ability of biological systems to mitigate adverse health effects as important considerations in the evaluation of the health hazard.

Support for a Threshold for Benzene. Commenters challenged EPA's nonthreshold presumption for benzene, arguing that the Agency had failed to consider convincing evidence that a leukemogenic threshold for benzene does exist and that this threshold is well above any ambient levels that might be encountered by the general population. In support of this position, commenters cited studies of benzene metabolism, alternative mechanisms for cancer induction, and evidence derived from epidemiological studies.

One commenter cited the work of Richert and Irons (*34*) as evidence that

exposure to levels of benzene below 10 ppm does not produce any adverse health consequences in human cells (OAQPS–79–3 [Part I] IV–D–13, [Part II] IV–F–1, IV–F–2, IV–F–3).

Rickert studied benzene metabolism in rodents and human cells *in vitro* to determine the concentrations of toxic benzene metabolites that might occur in the bone marrow of humans exposed to benzene (OAQPS 79–3 [Part II] IV–F–2). He concluded that the metabolite concentrations in rats and human tissue are of the same order of magnitude at similar benzene doses. Irons used this information to compare the metabolite concentrations expected at various benzene exposures with those at which the first signs of hematotoxicity (lymphocytopenia) occurred. He found "that a significant difference exists between the projected concentration of benzene metabolities in bone marrow, as calculated for a 6 hour exposure to 10 ppm benzene *in vitro*, and the concentration of the same metabolites which produce a demonstrable effect on a sensitive population of human cells *in vitro*" (OAQPS 79–3 (Part II) IV–F–3).

Although EPA regards this work, published after the release of the health assessment document, as generally supportive of the concept of a threshold for lymphocytopenia and other hematotoxic effects that may result from benzene exposure, EPA does not agree with the inference drawn from this study that exposures below 10 ppm pose no health risk. The *in vitro* system used may not represent the most sensitive human population at risk of hematotoxic effects. Further, it is not clear that effects such as lymphocytopenia must precede the induction of leukemia, nor has it been established that the benzene metabolities studied are related to the onset of leukemia.

Several commenters submitted that EPA's presumption of low-level benzene risk ignored alternative mechanisms for carcinogenesis, applicable to benzene, for which effect thresholds appear likely. One commenter asserted that, while a substance's ability to directly alter genetic material could be viewed as support for a nonthreshold mechanism, there is "no evidence that [benzene] react[s] with DNA" (OAQPS–79–3 [Part I] IV–D–9, [Part II] IV–D–22). According to the commenter, "Benzene induces neoplasia through cell injury" to the bone marrow. The injury is "followed by regeneration of the bone marrow and myelogenous leukemia in a small number of cases." During exposures of humans to benzene levels in the air of 10 ppm or less, the metabolic detoxification reactions maintain the levels [of benzene] and its metabolites to be sufficiently low in the blood to be below the threshold for any effect on the bone marrow or metabolic effects on lymphocytes" (OAQPS 79–3 [Part I] IV–D–9, IV–D–13, [Part II] IV–D–22, IV–F–1, IV–F–9; A–79–27 IV–D–24, IV–D–27, IV–D–29; A–79–49 IV–D–9, IV–D–11, IV–D–12, IV–F–1, IV–F–2; A–80–14 IV–D–1, IV–D–3, IV–F–1).

Similarly, commenters argued that the documented association between hematotoxic effects (usually decreases in the levels of various formed elements in blood: cytopenia, pancytopenia, and lymphocytopenia) and leukemia supports the finding that such effects may be a necessary precondition for leukemia. In this regard, one commenter quotes Goldstein's observation that "there [do] not appear to be any proven cases in which leukemia began in the absence of previous cytopenia." (*35*) Commenters contend that because "pre-leukemic" changes such as cytopenia "do not occur below about 35 ppm," this exposure level or, more conservatively, a level of 20 or 10 ppm constitutes an effective threshold below which benzene "presents no health risk whatsoever."

While EPA agrees that the nongenetic, or "epigenetic," mechanism constitutes a possible explanation for the way in which cancers could arise in the absence of direct interaction with genetic material, the Agency is not persuaded, based on the largely theoretical nature of this position, that such a mechanism has been demonstrated in the case of benzene. For similar reasons, the Agency continues to regard as inconclusive the contention that hematotoxic effects must necessarily precede the development of leukemia in benzene-exposed individuals.

Covalent bonding (reaction) with DNA is generally regarded as evidence that an agent may have the ability to "transform"a normal cell into an abnormal, and possibly cancerous, cell via a somatic mutation. The absence of such bonding or its nondetection, however, does not demonstrate that substances such as benzene may not interact directly with genetic material to produce aberrant cells. In fact, there is good evidence that benzene, at levels as low as 1 to 2.5 ppm, significantly increases chromosome abnormalities in bone marrow cells including chromosome breaks and marker chromosomes (rings, dicentrics, translocations, and exchange figures).(*3*)(*9*) Whether such changes are appropriately considered mutations or simply toxic events depends on the fate of the affected cell. As OSHA has pointed out in its benzene rulemaking:

> If the alteration in the chromosomal material results in an inhibition of further cellular division, then in terms of its reproductive potential, the cell is dead and the damage inflicted may be classified as a toxic event. However, if the damage does not interfere with the reproductive ability of the cell, and the alteration is replicated, this may constitute a persistent gross mutation. The finding of gross chromosomal damage in bone marrow cells clearly demonstrates that despite competing detoxification reactions * * * benzene, or a reactive metabolite is able to overwhelm protective defense mechanisms and enter the nucleus of hematopoietic cells. (43 FR 5918)

The quote attributed to Goldstein noting that "there [do] not appear to be any proven cases in which leukemia began in the absence of previous cytopenia" is correct but incomplete. Later in the page Goldstein cautions that this interpretation is "open to speculation, especially in view of the paucity of routine laboratory data preceding the onset of leukemia."(*36*)

The lack of information, as well as the retrospective nature of most of the analysis, makes it difficult to substantiate a precedent relationship between hematotoxic effects and leukemia. In this regard, OSHA has observed:

> * * * since the mechanism by which benzene induces leukemia has not been elucidated it is possible that leukemia develops, not in response to the pancytopenic effects of benzene, but rather to the direct carcinogenic effect on the marrow hematopoietic stem cells not necessarily accompanied by any other evidence of marrow effect * * *. In such events, protection against non-neoplastic blood disorders would not rule out subsequent development of leukemia (43 FR 5929).

Similarly, Browning, in 1965, noted: "benzene leukemia is frequently superimposed upon a condition of aplastic anemia, but it can develop without a preceding peripheral blood picture characteristic of bone marrow aplasia."(*18*)

Finally, EPA is not persuaded that the "thresholds" identified by commenters for benzene-induced "injury" are sound. First, it is not clear that techniques such as peripheral blood counts and aspiration of bone marrow are capable of consistently detecting injury to the hematopoietic system, particularly when the normal ranges of such counts are broad.(*6*)

Second, injury may be occurring at levels below those at which cytopenia is observed. In its review of benzene, NAS commented on a report of benzene-induced chromosome abnormalities:

"Vigliani and Forni (*37*) reported chromosomal aberrations of both the stable and unstable type. In general, the chromosome aberrations were higher in peripheral blood lymphocytes of workers exposed to benzene than in those of controls. This was true *even in the absence of overt signs of bone marrow damage"* (*4*) [emphasis added]. As noted above, Picciano and Kilian and Daniel have also reported significant increases in chromosomal aberrations, an effect whose toxic potential cannot be ignored, in workers exposed to benzene at levels substantially below the 10 ppm submitted as the lowest level for a "threshold" for benzene-induced effects.

Commenters found support for a benzene carcinogenic threshold in epidemiological studies that did not find a significant association between benzene exposure and leukemia (citing work by Thorpe, (*28*) Tabershaw, (*38*) and Stallones (*39*)), in control or nonexposed populations for which a case for benzene exposure could be made (citing Infante et al. (*14*)), and among exposed populations following exposure reduction efforts (citing Infante et al. (*14*) and Askoy et al. (*15*)). (OAQPS–79–3 [Part I] IV–D–9, IV–D–11, IV–D–13, [Part II] IV–D–22, IV–F–1, IV–F–9; A–79–27 IV–D–24, IV–D–28; A–79–49 IV–D–10, IV–D–11, IV–D–12, IV–F–1, IV–F–2; A–80–14 IV–F–1).

As indicated in "Health Basis for Listing" above, EPA believes that the shortcomings of the Thorne study do not permit a firm conclusion regarding a carcinogenic threshold for benzene. In the larger context of the utility of negative epidemiological studies, EPA, as a member of the IRLG, concluded that studies not finding a positive statistical correlation do not demonstrate the absence of a hazard, due to the limitations of epidemiologic investigations and long cancer latency periods during which exposure to other potentially carcinogenic substances can occur (44 FR 39858; July 6, 1979). In addition, OSHA (45 FR 5001; January 2, 1980) and the National Cancer Advisory Board (*40*) contend that negative epidemiological data do not necessarily establish the safety of suspect materials.

Similarly, while EPA agrees that follow up studies such as those undertaken on the Infante et al. and Aksoy et al. populations may be useful in demonstrating risk reductions, they are not appropriate support for a position that risks have been eliminated. As with "negative"epidemiological studies, EPA does not agree that such findings demonstrate the absence of a hazard.

Having reviewed the public comments, EPA concludes that the evidence submitted in support of a real or practical threshold for benzene-induced leukemia is not sufficient to overcome EPA's presumption that benzene may pose a finite risk of leukemia at any exposure level greater than zero.

Although commenters have sought to demonstrate that benzene may cause leukemia via a nongenetic mechanism that requires threshold-governed tissue injury prior to leukemia induction and that levels of benzene below this threshold are noninjurious or otherwise detoxified, EPA regards this evidence as largely theoretical in nature and, inconclusive.

EPA believes that the support for a "hematotoxic" threshold as protective against leukemia induction is speculative for two reasons: first, because neither the mechanism for benzene-induced leukemia nor that for blood disorders has been elucidated, and, second, because information is available that other effects of potential, adverse health consequence have been shown to occur at levels lower than those postulated as hematotoxic thresholds. Finally, EPA does not accept the premise that the nonpositive epidemiological studies offer a means of establishing credible no-effect levels.

For these reasons, recognizing the uncertainties in the scientific data base, EPA believes that the nonthreshold presumption should continue to apply in the case of benzene and that benzene should be considered to pose a risk of cancer at any exposure level above zero. EPA believes that this finding is consistent with the mandate of Section 112 requiring the protection of public health against air pollutants that "may reasonably be anticipated" to cause or contribute to the health effects of concern.

Quantitative Risk Estimates of Carcinogens. EPA initially published interim guidelines for the conduct of quantitative risk assessments (QRA) for carcinogens on May 25, 1976 (41 FR 21402). In 1979, these were succeeded by the report of the Work Group on Risk Assessment of IRLG (44 FR 39858; July 6, 1979) of which EPA was a member.

EPA prepared, in conjunction with the listing of benzene under Section 112 and the development of emissions regulations, an assessment of the population risk to ambient benzene exposures.(*8*) The assessment was based on an extrapolation of the human leukemogenic risk drawn from available epidemiological evidence in combination with an assessment of human exposure to benzene emitted into the air by stationary sources. (*7*)

Although a few commenters objected to the performance of a risk assessment, arguing that the underlying uncertainties were too great to permit a meaningful result, most respondents favored attempting to estimate population risks. In an extensive critique of EPA's assessment, however, commenters disagreed with EPA on a number of scientific and technical grounds, ranging from the appropriateness of the dispersion model used in estimating ambient benzene levels to errors in the assumptions made in deriving an estimate of benzene's leukemogenic potency. Commenters argued that the correction of such errors would result in an overall leukemogenic risk from benzene sources substantially below that predicted by EPA, and, in fact, small enough to be regarded as a "statistical artifact" for which regulatory attention was unwarranted.

The original assessment of human exposure to benzene was performed by the Stanford Research Institute (SRI) under contract to EPA. (*7*) A number of commenters on the benzene listing and proposed standards criticized the SRI assessment as relying on outdated emissions estimates, employing an upwardly biased exposure model, omitting plant-specific information, and erroneously including plants no longer using benzene (OAQPS–79–3 [Part II] IV–F–1, IV–F; A–79–49 IV–D–9). One commenter questioned the use of a 20-kilometer radius in developing the exposure estimates (OAQPS–79–3 [Part I] IV–D–8). Several commenters were supportive of an alternative methodology submitted by Systems Applications, Inc. (SAI) (OAQPS–79–3 [Part I] IV–D–9, IV–D–13, [Part II] IV–D–22, IV–F–1, IV–F–8, IV–F–9; A–79–49 IV–D–9).

EPA agrees that the SAI exposure methodology offers some improvements over the exposure methodology used by SRI for the benzene assessment. SAI developed its methodology under contract to EPA in response to a need for a rapid, computer-efficient method for conducting national-level exposure assessments. This methodology, with the additional data submitted in the course of the comment periods on the benzene proposals, has been used to revise the exposure estimates and risk assessments for the promulgated standards.

Although the SAI methodology has supplanted the methodology initially used by EPA to estimate benzene exposures, EPA does not agree that the

SRI report, for the purposes intended, is grossly inaccurate or upwardly biased.

The SRI report was intended to be an initial rough estimate of national-level exposures to ambient air concentrations of benzene caused by air emissions from various types of sources. The purpose of the report was to help EPA decide which benzene sources to study in more depth and thereby determine the extent of regulation needed under the Clean Air Act. The report also helped EPA determine the order in which the studies would be conducted. Those studies, which accompany the development of regulations under section 112 of the Clean Air Act, address far more explicitly the sources of benzene selected for regulation and the public exposures to benzene associated with those sources. The nature of many of the comments suggests that the commenters did not understand EPA's intended use of the report and of the intentionally rough-cut approach considered appropriate for that use.

EPA agrees that much of the SRI report is difficult to evaluate. This report was one of EPA's first attempts at estimating nationwide exposure, and the methodologies were not yet fully described. As explained, the report was not meant to be a definite statement on exposure to benzene, but to be a guide to follow-on studies. All deficiencies considered, EPA considers the report adequate for its intended use.

The selection of a 20-kilometer limit on exposure estimation in the vicinity of stationary sources is based on modeling considerations. Twenty kilometers was chosen as a practical modeling stop-point. The results of dispersion models are considered reasonably accurate within that distance. The dispersion coefficients used in modeling are based on empirical measurements made within 10 kilometers of sources. These coefficients become less applicable at long distances from the source, and the modeling results become more uncertain.

Comments were generally critical of the use by CAG of a linear, nonthreshold model to derive a benzene unit risk factor. One commenter (OAQPS–79–3 [Part II] IV–D–9) rejected the assumptions used by CAG of no threshold and the validity of the linear model extrapolated toward zero. Other commenters viewed the model as "inherently conservative" and likely to yield an upper limit of the health risks (OAQPS–79–3 [Part I] IV–D–13; A–79–27–IV–D–27; A–80–14–IV–D–10a, IV–D–13).

While EPA agrees that the linear, nonthreshold model is conservative and would tend to provide an upper bound to the statistical range for the unit risk factor, the Agency does not believe that the assumptions upon which it is based are unreasonable or that the results of its use are exaggerated. IRLG agreed that although the mathematical model identifies an upper limit estimate of risk from a statistical standpoint, "[t]he risk estimates as applied to humans should not be regarded as upper limit estimates because of large biological uncertainties."(*2*)

The dose-response model with linearity at low dose has been adopted for low-dose extrapolation by EPA because it has the best, albeit limited, scientific basis of any current mathematical extrapolation model.(*41*) This basis is supported by EPA's conclusions in a **Federal Register** notice (45 FR 79359; November 28, 1980) announcing the availability of Water Quality Criteria documents. The Agency concluded that, "[t]he linear non-threshold dose-response relationship is . . . consistent with the relatively few epidemiological studies of cancer responses to specific agents that contain enough information to make the evaluation possible . . . There is also some evidence from animal experiments that is consistent with the linear non-threshold hypothesis . . . ."

Commenters argues that, in addition to the conservative nature of the model used, the assumptions made by EPA (CAG) in the derivation of a unit leukemia risk factor for benezene represented "serious misinterpretation" of the underlying epidemiological evidence (OAQPS–79–3 [Part I] IV–D–13, [Part II] IV–F–1, IV–F–9; A–79–27–IV–D–27; IV–D–24; A–80–14–IV–D–10a, IV–D–21). Among the specific criticisms were: CAG (1) inappropriately included in its evaluation of the Infante et al. study two cases of leukemia from outside the cohort, inappropriately excluded a population of workers that had been exposed to benzene, and improperly assumed that exposure levels were comparable with prevailing occupational standards; (2) accepted, in the Aksoy et al. studies, an unreasonable undercount of the background leukemia incidence in rural Turkey, made a false adjustment for age, and underestimated the exposure duration; and (3) included the Ott et al. study in the analysis despite a lack of statistical significance.

As previously discussed in "Health Basis for Listing," EPA has reexamined and reevaluated each of the three studies. In summary, EPA concluded that one case of leukemia was inappropriately included from the Infante et al. study in computing the original unit risk factor. Additionally, EPA reaffirmed its decision to exclude dry-side workers from that study in developing the risk factor. The Agency with the commenters that the Aksoy et al. study was adjusted improperly for age; however, the exposures and durations of exposures are still considered reasonable estimates. The Ott et al. study was not eliminated from the risk assessment because the findings meet the test of statistical significance and because it provides the best documented exposure data available from the three epidemiological studies.

Based on these findings, the unit risk factor (the probability of an individual contracting leukemia after a lifetime of exposure to a benzene concentration of one part benzene per million parts air) was recalculated. The revised estimate resulted in a reduction of about 7 percent from the original estimate of the geometric mean, from a probability of leukemia of 0.024/ppm to a probability of leukemia of 0.022/ppm.

Significance of Estimated Carcinogenic Risks from Benzene Exposure. Based on EPA's estimates of carcinogenic risk or on the alternative calculations submitted to the Agency for consideration, a number of commenters asserted that the risk of developing leukemia from exposure to benzene in the ambient air was too small to warrant regulatory consideration under section 112. Specifically, commenters argued that the regulation of benzene under section 112 would have "no meaningful impact on the occurrence of leukemia in the general population" (OAQPS–79–3 [Part I] IV–D–9, [Part II] IV–F–1, IV–F–9). In support of this position, commenters cited EPA's estimate that roughly 80 percent of ambient benzene emissions were attributable to mobile sources that would not be regulated under section 112 and noted that the number of leukemia cases predicted by the EPA assessment to occur as the result of benzene emissions from stationary source categories represented "less than one-tenth of one percent [of] the normal leukemia mortality risk in the U.S. population, . . . a result so small as to be indistinguishable from a risk of zero" (OAQPS–79–3 [Part I] IV–D–13, [Part II] IV–F–1, IV–F–9; A–79–49–IV–D–9; A–79–27–IV–D–18, IV–D–10, IV–F–1; A–80–14–IV–D–10a, IV–F–1).

Several commenters referenced, as evidence of the insignificance of the ambient benzene risk, the comparable or higher risks associated with activities such as skiing, hunting, and sky diving (OAQPS–79–3 [Part I] IV–D–19) and with involuntary hazards such as drowning

and electrocution (OAQPS–79–3 [Part I] IV–D–13, [Part II] IV–F–1, IV–F–9).

Commenters also maintained that the estimated risks posed by benzene emissions were at or below levels recognized by EPA and other Federal agencies as acceptable goals or targets for regulation (OAQPS–79–3 [Part I] IV–D–13).

EPA does not agree with the commenter's assertions that the health risks posed by benzene emissions from all stationary sources are insignificant or that the regulation of benzene under Section 112 is, therefore, unwarranted. EPA continues to believe that the well-documented evidence of benzene's leukemogenicity, the quantity of stationary source emissions, the observed and estimated ambient concentrations, the proximity of large populations to emitting sources, and the numerical estimates of health risks (including consideration of the uncertainties of such estimates) support the judgement that benzene is an air pollutant that "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness" (section 112(a)(1) of the Clean Air Act).

With an estimated 9.9 billion pounds (4.5 million megagrams) produced in 1981, benzene ranks 16th among all chemicals in terms of production volume in the United States. (*42*) Benzene is the largest production chemical that has been causally linked to cancer in humans.

EPA estimates that more than 120 million pounds (55,000 megagrams) of benzene are emitted annually to the ambient air from stationary industrial sources. The sources are primarily plants involved in benzene production, other chemical manufacturing, and the storage and distribution of benzene and gasoline. At these sources, benzene is emitted from the process vents, storage tanks, and liquid transfer operations as well as from leaks in process components such as pumps and valves. According to EPA estimates, at least 30 to 50 million people live within 20 kilometers of stationary sources (excluding gasoline marketing sources) that emit benzene. Levels of benzene have been monitored in the vicinity of benzene-emitting facilities at levels as high as 350 ppb (1,117 $\mu g/m^3$) with median values of 3.0 ppb (9.6 $\mu g/m^3$). (*43*)

EPA regards benzene emissions from some stationary source categories and potential human exposure to these emissions as significant. The fact that mobile sources emit more benzene than do stationary sources has no bearing on the significance of the benzene emissions from stationary sources, since these sources also emit large quantities of benzene. The fact that specific standards have not been proposed for mobile sources does not imply that the Agency has reached a conclusion on the significance of the health risks associated with these sources. As commenters pointed out, mobile sources are not regulated under section 112, but under Title II of the Clean Air Act. A control technology applicable for benzene emissions from mobile sources, as for other hydrocarbon compounds, is installation of a catalytic converter. In fact, benzene emissions from mobile sources are reduced substantially (along with other hydrocarbon compounds) by catalytic converters, installed in response to standards established under Title II of the Clean Air Act. EPA projects that by 1985, mobile source benzene emissions will have been reduced by 69 percent compared with those in the baseline year when the Clean Air Act was enacted (1970), and by 1990 they will have been reduced by 83 percent.

EPA disagrees that benzene does not warrant regulation because such regulation will not have a meaningful impact on the occurrence of leukemia in the general population. Except for established causal relationships with benzene and certain hereditary factors, the causes of leukemia are not known. Because it is estimated that only a small proportion of leukemias may, at present, be preventable does not argue that reasonable control measures should not be taken.

Furthermore, EPA does not agree that the presence of other unregulated or tolerated health risks, equal or greater in magnitude than those estimated for benzene exposure, obviates the need for regulation. Activities such as hunting and skiing are essentially voluntary in nature with well-advertised risks. The risk of someone being struck by lightning, while largely involuntary, would be difficult to reduce effectively. For benzene, however, a large component of the health risk is involuntary. At the same time, reasonable actions are available that can reduce the risks from benzene exposure. EPA questions the appropriateness of weighing risks that are accepted voluntarily or that have little opportunity for mitigation against risks largely beyond the individual's control but for which societal remedies are readily available.

Finally, commenters have chosen to make comparisons based on the "average" lifetime risks or the expected number of leukemia cases attributable to benzene emissions, arguing that an "average" lifetime risk of leukemia from ambient levels of benzene of 1 per 100,000 (10^{-5}) does not constitute a significant hazard and has, in fact, been accepted by EPA and other Federal agencies as an appropriate goal for regulation. Aside from the technical and philosophical difficulties inherent in the selection and verification of such goals described above, EPA has not selected a specific "goal" for carcinogenic risks from hazardous air pollutants and, further, disagrees with the choice of the "average" lifetime risk as an appropriate measure of individual risk. EPA believes that the determination that a substance poses a significant health risk via the ambient air must include consideration of the magnitude of the hazard to those individuals and subpopulations most expose to emissions of the substance. In the case of benzene, the estimated maximum lifetime risks for these populations are generally higher than are "average" risks cited by commenters. Current EPA estimates for the most exposed individuals living in the vicinity of source categories for which standards are being developed range from a leukemia risk of 150 per 100,000 for benzene fugitive sources to 640 per 100,000 for coke by-product plants (OAQPS A–79–16). The reader should recognize that any time leukemia risk numbers are cited, they are subject to considerable uncertainty. These uncertainties are explained in the next section of this preamble, titled "Selection of Benzene Source Categories for Regulations."

In conclusion, EPA continues to believe that benzene emissions from some stationary source categories represent a significant risk of leukemia to exposed populations, particularly to those individuals and subpopulations residing near major point sources. This belief rests on the documented evidence that benzene is a human leukemogen, on the magnitude of benzene emissions to the ambient air, on the observed and estimated ambient concentrations, on the proximity of large populations to emitting sources, and on estimates of the health risks to exposed populations, including consideration of the uncertainties associated with quantitative risk estimates (including the effects of concurrent exposures to other substances and to other benzene emissions).

Thus, EPA still believes that the listing of benzene on June 8, 1977, was appropriate and that delisting is inappropriate. The evidence submitted by commenters is judged insufficient to

support a conclusion that ambient levels of benzene do not pose carcinogenic risks or that the risks posed by benzene emitted by all stationary source categories are insignificant.

Other Issues Relevant to Listing of Benzene

Several commenters asserted that the listing of benzene was unnecessary in view of the "network of regulatory programs already put into effect to control ambient benzene exposures," thus taking benzene out of the statutory definition of "hazardous air pollutant" under section 112 (OAQPS–79–3 [Part I] IV–D–10, IV–D–13, [Part II] IV–F–1, IV–F–9; A–79–49 IV–D–10, IV–F–1, IV–F–2; A–80–14–IV–D–13, IV–D–10a, IV–F–1).

The regulatory programs to which the commenters refer were put into effect to attain and maintain the national ambient air quality standard (NAAQS) for ozone, not to control ambient benzene exposures. The health effects from exposure to ozone are very different from the health effects from exposure to benzene; ozone-caused health effects are serious, but there is no evidence that exposure to ozone causes cancer. Therefore, no scientific or technical basis exists for believing that attaining and maintaining NAAQS for ozone will ensure that the public is amply protected from benzene exposure.

It is true that controlling VOC emissions to attain and maintain the ozone standard often results in a degree of control over benzene emissions, because benzene is often emitted with the VOC's being controlled. EPA did not, as one commenter suggests, "ignore" this fact. The effectiveness of existing State standards and control devices in place for any other reason has been considered when emissions from existing plants have been estimated. In fact, the amount of control currently in place for three benzene source categories for which standards were previously proposed, maleic anhydride and EB/S process vents and benzene storage vessels, is relevant to the Agency's proposed conclusion that benzene emissions from these source categories no longer warrant federal regulatory action. One cannot reasonably assume, however, that the extent and stringency of the control of VOC emissions equates to adequate control of all benzene emissions nationwide. For example, the State regulations that control VOC emissions are federally required only for areas of the State where they are needed to attain and maintain the ozone standard; in areas of the State where such regulations are required, the regulations need be applied only to enough VOC sources with enough regulatory stringency to attain and maintain the ozone standard. Such regulations do not necessarily control all stationary benzene sources adequately. Consequently, the Agency disagrees with the commenters' assertions that existing regulatory programs for ozone/VOC's make it unnecessary to regulate any benzene sources.

Commenters suggested that EPA should adopt an acceptable carcinogenic risk target for benzene and other airborne carcinogens, citing precedents in other EPA and Federal rulemakings (OAQPS–79–3) [Part I] IV–D–13, [Part II] IV–F–1, IV–F–9; A–79–49 IV–F–1, IV–F–2).

EPA agrees that it can identify a lower *range* of risk estimates (incidence and maximum risk) where it is judged that the health risks do not pose such a public health problem as to warrant federal regulation. This, in conjunction with other factors such as achievable emissions and health risk reductions, can convince the Administrator that a source category is not appropriate to regulate under section 112. This is the case for the proposed withdrawal of the proposed benzene standards for maleic anhydride and EB/S process vents and benzene storage vessels.

Selection of Benzene Source Categories for Regulation

EPA proposed standards for four source categories of benzene emissions: maleic anhydride process vents, ethylbenzene/styrene process vents, fugitive emission sources, and benzene storage vessels. A standard will be proposed for a fifth source category, coke by-product plants. Comments submitted on each of the four proposed standards contended that each of the source categories regulated does not pose a significant risk to public health and therefore does not warrant regulation (OAQPS–79–3 [Part II] IV–D–9, IV–D–22, IV–F–1, IV–F–9; A–79–27 IV–D–24, IV–D–27, IV–D–28, IV–F–1, IV–K–1; A–79–49 IV–D–7, IV–D–10, IV–D–12; A–80–14 IV–D–10a, IV–D–13, IV–D–16, IV–F–1). Similar preproposal comments have been received on the coke by-product source category. Arguments advanced in support of this position include the relative insignificance of stationary source emissions of benzene versus mobile source emissions; the low level of estimated benzene risks compared to other public health risks; and the negligible impact of benzene control on the total U.S. leukemia incidence. EPA's response to these comments appears in the section entitled "Significance of the Estimated Carcinogenic Risks from Benzene Exposures." Additionally, commenters maintained that, even if the source categories regulated could be considered significant at proposal, emissions from these source categories are now actually much lower than projected at proposal and, thus, no longer pose significant risk.

Selection of Five Source Categories for Initial Regulation

Following the listing of benzene as a hazardous air pollutant, EPA divided the stationary sources of benzene emissions into 12 source categories. After evaluating these 12 source categories, EPA selected five source categories of benzene for initial regulation: process vents at maleic anhydride and EB/S plants, benzene fugitive emission sources, benzene storage vessels, and coke by-product plants.

EPA is collecting additional data on the remaining seven source categories to use in deciding whether or not standards development is warranted for them.

Proposal of Standards: Significant Risk Judgment

The information used in selecting the five source categories for initial regulation was preliminary information, based on screening studies of the identified source categories. During standards development prior to proposal, EPA gathered more detailed and refined information. The new information necessitated revisions in emissions estimates for the five source categories with some estimates increasing and others decreasing. Examples of the information used to upgrade emissions estimates include emissions test data, updated status on the number of operating plants, and more precise information on the control devices already installed on these plants.

In addition to upgrading the emissions estimates, EPA used the more precise emissions data to revise the quantitative risk estimates. At the time that standards for maleic anhydride process vents, EB/S process vents, benzene fugitive emissions sources, and benzene storage vessels were proposed, EPA made a judgment that the emissions from each of these source categories pose a significant leukemia risk. EPA based this judgment on the upgraded emissions and risk estimates available at that time.

Table I presents information for each source category, based on the emissions status of that source category at the time the standards were proposed. The

uncertainties in the risk estimates are described in the following paragraphs.

The ranges of maximum lifetime risk and annual leukemia incidence at proposal presented in Table I represent the uncertainty of estimates concerning benzene concentrations to which workers were exposed in the occupational studies of Infante, Aksoy, and Ott that served as the basis for developing the benzene unit risk factor. The ranges presented in this table represent 95 percent confidence limits on two sources of uncertainty in the benzene risk estimates. One source derives from the variations in dose/response among the three occupational studies upon which the benzene unit risk factor is based. A second source involves the uncertainties in the estimates of ambient exposure. In the former case, the confidence limits are based on the assumption that the slopes of the dose/response relationships are unbiased estimates of the true slope and that the estimates are log normally distributed. In the latter case, the limits are based on the assumption that actual exposure levels may vary by a factor of two from the estimates obtained by dispersion modeling (assuming that the source-specific input data are accurate).

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TABLE I. BASELINE IMPACTS OF BENZENE SOURCE CATEGORIES AT PROPOSAL AND NOW

Standard	Benzene emissions (Mg/year)	Benzene and other VOC emissions (Mg/year)	Number of affected plants	Maximum lifetime risk[2 3]	Leukemia incidence/year [1 3] (Cases per year)
Benzene Fugitive					
At proposal	8,300	13,200	130	1.7×10^{-4} to 1.2×10^{-3}	0.15 to 1.1
Current	7,900	12,600	128	1.5×10^{-3}	0.45
Maleic Anhydride					
At proposal	5,800	7,400	7 (5)[4]	2.3×10^{-4}	0.46
Current	960	1,250	7 (1)[4]	7.6×10^{-5}	0.029
Ethylbenzene/Styrene					
At proposal	2,400	6,240	13 (12)[4]	6.2×10^{-4} to 4.4×10^{-3}	0.027 to 0.20
Current	210	330	13 (3)[4]	1.4×10^{-4}	0.0057
Benzene Storage					
At proposal	2,200	2,200	126	1.5×10^{-4} to 1.0×10^{-3}	0.12 to 0.82
Current	620	620	126	3.6×10^{-5}	0.043

Footnotes for Table I.

[1]Within 20 kilometers of plant.

[2]Maximum lifetime risk is the estimated probability that the people exposed continuously for 70 years to the highest maximum annual average ambient concentration of benzene will contract leukemia as a result of that exposure.

[3]The ranges of maximum lifetime risk and annual leukemia incidence at proposal presented in this table represent the uncertainty of estimates concerning benzene concentrations to which workers were exposed in the occupational studies of Infante, Aksoy, and Ott that served as the basis for developing the benzene unit risk factor. The ranges presented in this table represent 95 percent confidence limits on two sources of uncertainty in the benzene risk estimates. One source derives from the variations in dose/response among the three occupational studies upon which the benzene unit risk factor is based. A second source involves the uncertainties in the estimates of ambient exposure. In the former case, the confidence limits are based on the assumption that the slopes of the dose/response relationships are unbiased estimates of the true slope and that the estimates are lognormally distributed. In the latter case, the limits are based on the assumption that actual exposure levels may vary by a factor of two from the estimates obtained by dispersion modeling. Several other uncertainties are associated with the estimated health numbers and are not quantified here. EPA has extrapolated the leukemia risks identified for occupationally exposed populations (generally healthy, white males) to the general population for whom susceptibility to a carcinogenic insult could differ. The presence of more or less susceptible subgroups within the general population would result in an occupationally-derived risk factor that may underestimate or overestimate actual risks. To the extent that there are more susceptible subgroups within the general population, the maximum individual lifetime risks are underestimated.

On the other hand, general population exposures to benzene are much lower than those experienced by the exposed workers in the occupational studies, often by several orders of magnitude. In relating the occupational experience to the general population, EPA has applied a linear, nonthreshold model that assumes that the leukemia response is linearly related to benzene dose, even at very low levels of exposure. There are biological data supporting this approach, particularly for carcinogens. However, there are also data which suggest that, for some toxic chemicals, dose/response curves are not linear, with response decreasing faster than dose at low levels of exposure. At such levels, the nonlinear models tend to produce smaller risk factors than the linear model. The data for benzene do not conclusively support either hypothesis. EPA has elected to use the linear model for benzene because this model is generally considered to be conservative compared to the nonlinear alternatives. This choice may result in an overestimate of the actual leukemia risks.

EPA estimates ambient benzene concentrations in the vicinity of emitting sources through the use of atmospheric dispersion models. EPA believes that its ambient dispersion modeling provides a reasonable estimate of the maximum ambient levels of benzene to which the public could be exposed. The models accept emission estimates, plant parameters, and meteorology as inputs and predicts ambient concentrations at specified locations, conditional upon certain assumptions. For example, emissions and plant parameters often must be estimated rather than measured, particularly in determining the magnitude of fugitive emissions and where there are large numbers of sources. This can lead to overestimates or underestimates of exposure. Similarly, meteorological data often are not available at the plant site but only from distant weather stations that may not be representative of the meteorology of the plant vicinity.

EPA's dispersion models normally assume that the terrain in the vicinity of the sources is flat. For sources located in complex terrain, this assumption would tend to underestimate the maximum annual concentration although estimates of aggregate population exposure would be less affected. On the other hand, EPA's benzene exposure models assume that the exposed population is immobile and outdoors at their residence, continuously exposed for a lifetime to the predicted concentrations. To the extent that benzene levels indoors are lower and that people do not reside in the same area for a lifetime, these assumptions will tend to overpredict exposure.

Upon reconsideration, EPA has concluded that the presentation of the risk estimates as ranges does not offer significant advantages over the presentation as the associated point estimates of the risk. Further, the proposal ranges for benzene make risk comparisons among source categories more difficult and tend to create a false impression that the bounds of the risks are known with certainty. For these reasons, the benzene risks in this rulemaking are presented as point estimates of the leukemia risk. EPA believes that these risk numbers represent plausible, if conservative, estimates of the magnitude of the actual human cancer risk posed by benzene emitted from the source categories evaluated. For comparison, the proposal ranges may be converted into rough point estimates by multiplying the lower end of the range by a factor of 2.6.

[4]Includes all plants; number in parenthesis denotes number of plants with uncontrolled emissions which would be controlled by the standard.

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Several other uncertainties are associated with the estimated health numbers and not quantified in the proposal ranges in Table I. EPA has extrapolated the leukemia risks identified for occupationally exposed populations (generally healthy, white males) to the general population for whom susceptibility to a carcinogenic insult could differ. The presence of more or less susceptible subgroups within the general population would result in an occupationally-derived risk factor that may underestimate or overestimate actual risks. To the extent that there are more susceptible subgroups within the general population, the maximum individual lifetime risks are underestimated.

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Post-Proposal Review of Significant Risk Judgment

Some commenters on the proposed standards indicated that benzene emissions were actually much lower than estimated at proposal, citing factors such as increased controls, plant closures, reduced production capacity, and lower emission factors. In support of their contentions, they submitted detailed plant-specific information and results of emission test programs.

Based on this updated information, EPA has revised benzene emissions for the various source categories (see Table I). The maleic anhydride emissions estimates now include consideration of all new controls, plant closures, and changes in feedstock. The EB/S emissions estimates are those provided by the industry, based on plant-specific information. (In addition, EPA-assumed flare efficiency has been revised to 98 percent from 60 percent.) New benzene emission factors have been developed for benzene storage tanks and refined for benzene fugitive sources.

Based on these revised emissions estimates, EPA reconsidered whether benzene emissions from maleic anhydride process vents, EB/S process vents, benzene fugitive emission sources, and benzene storage vessels still warrant Federal regulation under Section 112. The factors considered by EPA are described in the following paragraphs. (The selection of coke by-product recovery plants for regulation is discussed in the preamble to the proposed standard for that source category and is not discussed further here).

Benzene fugitive emissions, which are not substantially different than they were when judged to be significant at proposal, contribute 7,900 Mg/yr; this figure reflects currrent controls. (EPA adjusted the control level for petroleum refineries in nonattainment areas to reflect controls required by States in accordance with EPA's Control Techniques Guideline (CTG) document. This adjustment reduced emissions, but the reduction was offset to some extent by refinements in emissions factors.) Approximately 20 to 30 million people live within 20 kilometers of the 128 plants with these fugitive emissions. These people are exposed to higher levels of benzene than is the general population. Due to the lack of a demonstrated threshold for benzene's carcinogenic effects, these people not only incur a higher benzene exposure but also run greater risk of contracting leukemia due to that exposure.

EPA revised the quantitative risk assessments for this source category based on the updated emissions estimates, the revised risk factor, and the more detailed SAI human exposure model. The lifetime risk of contracting leukemia for the most exposed individuals is estimated to be about 1.5×10^{-3} for benzene fugitive emission sources, and the increased leukemia incidence as a result of exposure to the current fugitive emissions is estimated to be about 0.45 cases per year. As explained earlier in this section, there is considerable uncertainty associated with the calculation of leukemia incidence and maximum lifetime risk numbers.

The number of process units emitting benzene fugitive emissions is anticipated to grow from about 240 to 310 units. These new sources probably would increase the number of people exposed to benzene emitted from this

source category and increase the estimated leukemia incidence accordingly.

Based on the human carcinogenicity of benzene, the magnitude of benzene fugitive emissions, the estimated ambient benzene concentrations in the vicinity of the plants with fugitive emissions, the proximity of people to these plants, the resulting estimated maximum individual risks and estimated incidence of leukemia cases in the exposed population, the projected increase in benzene emissions as a result of new sources, the estimated reductions in emissions and health risks that can be achieved, and consideration of the uncertainties associated with the quantitative risk estimates (including effects of concurrent exposures to other substances and to other benzene emissions), EPA finds that benzene emissions from benzene fugitive emission sources pose a significant cancer risk and that the establishment of a national emission standard under Section 112 is warranted. These factors will be discussed in more detail in the forthcoming document, "Benzene Fugitive Emissions—Background Information for Promulgated Standards," EPA–450/3–80–032b.

Several other factors were also considered which support this finding. First, if no standards were promulgated, several existing plants would remain uncontrolled or poorly controlled. Some benzene fugitive emissions sources are located in nonattainment areas and are controlled to some extent in accordance with the CTG; others are in attainment areas where no control is required. Control techniques are readily available to reduce uncontrolled emissions from benzene fugitive emission sources at reasonable costs. Second, nationwide standards would ensure that existing sources are controlled on a continuing basis. Third, if no standard were promulgated, new sources could remain uncontrolled or poorly controlled, thereby increasing cancer risks.

The revised estimated baseline emission and health impacts for maleic anhydride and EB/S process vents and benzene storage vessels have decreased significantly since proposal of the standards for these source categories. These impacts are presented in Table I. Because of this decrease and the small additional reduction in health risks that could be achieved, the Agency has concluded that these source categories no longer warrant federal regulation under section 112. The basis for this decision is discussed in an accompanying **Federal Register** notice that proposes withdrawal of the proposed benzene standards for these three source categories.

Docket

The dockets are organized and complete files of all the information submitted to, or otherwise considered by, EPA in the development of this proposal. The principal purposes of the docket are to allow interested parties to effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review except for interagency review materials [307(d)(7)(A)].

Miscellaneous

This proposal was submitted to the Office of Managment and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA responses to those comments are available for inspection in Docket Number OAQPS–79–3 (maleic anhydride), A–79–49 (EB/S), or A–80–14 (benzene storage), Central Docket Section, at the address given in the **ADDRESSES** section of this preamble.

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Dated: May 23, 1984.

William D. Ruckelshaus,

Administrator.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

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Wednesday
June 6, 1984

Part III

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Benzene Equipment Leaks (Fugitive Emission Sources); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2538-4]

National Emission Standards for Hazardous Air Pollutants; Benzene Equipment Leaks (Fugitive Emission Sources)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) listed benzene as a hazardous air pollutant under Section 112 of the Clean Air Act on June 8, 1977 (42 FR 29332). A standard was subsequently proposed for benzene fugitive emission sources (46 FR 1165, January 5, 1981). This **Federal Register** notice responds to comments on and promulgates the standards for benzene fugitive emission sources.

EFFECTIVE DATE: June 6, 1984. Under section 307(b)(1) of the Clean Air Act, judicial review of national emission standards for hazardous air pollutants (NESHAP) is available *only* by filing a petition for review in the United States Court of Appeals for the District of Columbia circuit within 60 days of today's publication of these rules. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. The director of the **Federal Register** approves the incorporation by reference of certain publications in 40 FR effective on June 6, 1984.

ADDRESSES: *Background Information Documents.* The background information documents (BID's) may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. For background information on today's promulgated standard, please refer to "Benzene Fugitive Emissions—Background Information for Promulgated Standards," EPA–450/3–80–032b. The BID for the promulgated standard contains: (1) A summary of all public comments on the proposed standard and the Administrator's response to the comments; (2) a summary of changes to the standard since proposal; and (3) the final environmental impact statement (EIS), which summarizes the impacts of the standard.

Dockets. Docket No. A–79–27 contains technical information considered in developing the promulgated standard for benzene fugitive emissions. Docket No. OAQPS 79–3 (Part I) contains information considered on the health effects, listing, and regulation of benzene. These dockets are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information concerning the background technical information supporting the promulgated standard, contact Mr. James F. Durham, Chemicals and Petroleum Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5671. For further information on the regulation of benzene and the promulgated standard, contact Mr. Gilbert H. Wood, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

SUPPLEMENTARY INFORMATION:

Background Information on Health Effects of Benzene

On June 8, 1977, the Administrator announced his decision to list benzene as a hazardous air pollutant under section 112 of the Clean Air Act (42 FR 29332). Supplementary background information regarding the health effects and listing of benzene as a hazardous air pollutant may be obtained from Docket No. OAQPS–79–3 (Part I). A public hearing was held on August 21, 1980, to discuss the health effects and listing of benzene as a hazardous air pollutant. Comments were received and EPA's responses are detailed in the EPA document, "Response to Public Comments on EPA's listing of Benzene Under section 112" (EPA–450/5–82–003).

Summary of the Standard

The standard applies to certain new and existing equipment in benzene service (i.e., equipment containing materials with a benzene concentration of 10 percent or more by weight) except those located in process units that produce benzene or benzene mixtures at coke by-product plants or at plant sites that are designed to produce or use benzene in quantities of 1,000 megagrams per year (Mg/yr) or less. Equipment covered by the standard includes new and existing valves, pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, pipeline flanges, product accumulator vessels, and closed vent systems and control devices used to comply with the standard. The standard includes work practices and other requirements as provided by section 112(e) of the Clean Air Act and discussed in the preamble to the proposed rule (46 FR 1177). Permission to use any alternative means of emission limitation will be granted after a notice is published in the **Federal Register** and an opportunity for a public hearing.

Valves. A monthly leak detection and repair program is required by the standard for valves in gas or liquid service. However, EPA will allow quarterly monitoring for valves that have been found not to leak for 2 successive months. This is monthly/quarterly leak detection and repair. Leak detection is to be performed with a portable organic vapor analyzer according to Reference Method 21 (see Appendix A of 40 CFR Part 60). If a reading of 10,000 ppm or greater of organic materials is obtained, a leak is detected. Initial repair of the leak must be attempted within 5 days, and the repair must be completed within 15 days.

Since proposal, provisions for difficult-to-monitor and unsafe-to-monitor valves have been added to the standard for valves. For existing valves, the standard has been changed to allow an annual leak detection and repair program for valves that are difficult to monitor. Valves that are difficult to monitor are defined as valves that would require elevating the monitoring personnel more than 2 meters above any permanent available support surface. This means valves that cannot be safely monitored by the use of step ladders could be classified as difficult to monitor.

In addition, some valves are unsafe to monitor. Valves that are unsafe to monitor cannot be eliminated in new or existing units. The final standard has been changed to allow an owner or operator to submit a plan that defines a leak detection and repair program conforming with the routine monitoring requirements of the standard as much as possible, with the understanding that monitoring should not occur during unsafe conditions. Valves that are unsafe to monitor are defined as those valves that could, as demonstrated by the owner or operator, expose monitoring personnnel to imminent hazards from temperature, pressure, or

explosive process conditions. EPA expects very few unsafe-to-monitor valves in benzene service.

At proposal, two alternative standards were presented for valves in gas/vapor and liquid service. Both of these alternatives called for 1 year of monthly monitoring to obtain data on which to base the alternative standard. However, since proposal, the two alternative standards have been changed in response to comments concerning the need to collect data.

The first alternative standard specifies a 2 percent limitation as the maximum percent of valves leaking within a process unit, determined by a minimum of one performance test annually. This alternative provides the flexibility of a performance level that could be met by implementing any type of leak detection and repair program and engineering controls chosen at the discretion of the owner or operator. If the results of a performance test show a percentage of valves leaking higher than 2 percent, however, the process unit would not be in compliance with the standard. Finally, if owners or operators determine that they no longer wish to comply with this alternative standard, they must submit a notification in writing to EPA stating that they will comply with the monthly/quarterly leak detection and repair program.

The second alternative standard specifies two statistically-based skip-period leak detection and repair programs. Under skip-period leak detection, an owner or operator can skip from routine monitoring (monthly/quarterly monitoring) to less frequent monitoring after completing a number of consecutive monitoring intervals with performance levels less than 2 percent. This approach provides that the performance level is achieved for each skipped period with better than 90 percent certainty. Based on this skip-period approach, two sets of consecutive periods and fraction of periods skipped were determined for benzene process units. First, after two consecutive quarterly periods with fewer than 2 percent of valves leaking, an owner or operator may skip to semiannual monitoring. Second, after five consecutive quarterly periods with fewer than 2 percent of valves leaking, an owner or operator may skip to annual monitoring. This alternative standard also requires that, if a process unit exceeds the 2 percent of valves leaking, the owner or operator must revert to the monthly/quarterly leak detection and repair program. Compliance with this alternative standard would be determined by inspection and review of records.

The delay of repair provisions for valves have been expanded in the final standard. In the proposed standard, delay of repair was allowed where repair is technically or physically infeasible without a process unit shutdown. In addition to the provision already in the proposed standard, several provisions have been added to the final standard. One added provision allows for delay of repair beyond a process unit shutdown for valves when unforeseeable circumstances deplete valves used for repair. Another provision has been added to allow delay of repair for valves if the owner or operator shows that leakage of purged material during repair is greater than the equipment leaks that are likely to result from delay of repair. EPA expects this provision to be used seldom.

A definition of "process unit shutdown" has been added to the standard to avoid extended delays in returning a process unit to production if the unit shuts down briefly due to unforeseen circumstances. Delay of repair beyond an unforeseen process unit shutdown will be allowed if the shutdown is less than 24 hours in duration. Repair of leaking equipment for which repair has been delayed would be required at the next process unit shutdown.

As part of the delay of repair requirements, EPA is clarifying its intent for spare equipment that does not remain in benzene service. Delay of repair of equipment for which leaks have been detected will be allowed if the equipment is isolated from the process and no longer contains benzene in concentrations greater than 10 percent. The equipment purge must be destroyed or recovered in a system that complies with the requirements discussed in the *Closed-vent systems and control devices* portion of this section of the preamble.

Pumps. A monthly leak detection and repair program is required by the standard for benzene-handling pumps in liquid service. Leak detection is to be performed with a portable organic vapor analyzer according to Reference Method 21. If a reading of 10,000 ppm or greater of organic materials is obtained, a leak is detected. Initial repair of the leak must be attempted within 5 days, and the repair must be completed within 15 days. Delay of repair will be allowed for pumps that cannot be repaired without a process unit shutdown. Delay of repair, up to 6 months after detecting a leak, is also allowed when the plant owner or operator determines that repair of the pump requires using a dual mechanical seal system. Delay of repair is not expected to be needed for most situations, however, because pumps are commonly spared.

At proposal, EPA required a monthly leak detection and repair program for existing pumps but required the installation of dual mechanical seal systems for new pumps. Since proposal, as discussed in the *Selection of the Final Standard* section of this preamble, EPA analyzed the annualized cost of controlling benzene emissions and the resultant emission reduction for each alternative control technique. Based on comparison of costs and emission reductions, including estimates of exposures to benzene, EPA selected the work practice standard (leak detection and repair) for new as well as existing pumps. However, EPA is allowing the use of dual mechanical seal systems in the final standard. If an owner or operator prefers, he or she may comply with the equipment standard. The details or provisions of the equipment standard have not been changed since proposal.

Compressors. The standard for new and existing compressors requires the use of mechanical seals with barrier fluid systems and controlling degassing vents. The controlling degassing vents must use a closed-vent system and a control device that complies with the requirements as discussed in the *Closed-vent systems and control devices* portion of this section of the preamble. For existing compressors, EPA proposed a monthly leak detection and repair program. Since proposal, EPA reconsidered the selection of the final standard and concluded that the installation of control equipment is the only viable control technique for compressors.

Pressure relief devices. The use of control equipment (rupture disk systems or closed-vent systems to flares) is the basis for the standard for pressure relief devices in gas service. For control techniques that eliminate equipment leaks, such as the use of rupture disk systems, an emission limit measurement for "no detectable emissions" can be established. An instrument reading of less than 500 parts per million by volume (ppmv) above a background concentration based on Reference Method 21 will be used to indicate whether equipment leaks have been eliminated.

The "no detectable emission" limit will not apply to discharges through the pressure relief device during overpressure relief because the function of relief devices is to discharge process

fluid, thereby reducing dangerous high pressures within the equipment. The standard specifies, however, that the relief device be returned to a "no detectable emissions" status within 5 days after such a discharge. The standard further requires an initial and annual test to verify the "no detectable emissions" status of the pressure relief devices.

Plant owners or operators may also comply with this standard by connecting pressure relief devices in gas service to a system that complies with the requirements as discussed in the *Closed-vent systems and control devices* portion of this section of the preamble. Since proposal, the use of flares has been allowed as an alternative control device in the final standard. EPA judges that the added emission reduction achieved by reducing the emissions that occur during overpressure relief offsets the decrease in emission reduction that would occur by allowing 95 percent reduction (level of control required of all control devices) rather than the 100 percent reduction associated with rupture disk systems.

Sampling connection systems. Closed-purge sampling is the required standard for sampling connection systems. Closed-purge sampling connection systems eliminate emissions due to purging by either returning the purge material directly to the process or by collecting the purge in a collection system that is not open to the atmosphere. Collected purge material must be destroyed or recovered in a system that complies with requirements discussed in the *Closed-vent systems and control devices* portion of this section of the preamble.

Since proposal, EPA decided to allow closed-vent vacuum systems connected to a control device and *in-situ* sampling systems in addition to closed-purge sampling. Closed-vent vacuum systems that are connected to a control device extract the sample purge and then reduce emissions from the sample purge by transporting benzene to the control device. If closed-vent vacuum systems are not open to the atmosphere and the system complies with the requirements discussed in the *Closed-vent systems and control devices* portion of this section of the preamble, then their reduction of benzene emissions would be equivalent to the reduction achieved by closed-purge sampling connection systems. *In-situ* sampling systems involve measurement or sampling of process stream conditions without extraction of the sample from the process stream. *In-situ* sampling systems, therefore, result in no emissions of benzene.

Open-ended valves or lines. The standard for open-ended valves or lines requires the use of caps, plugs, or any other equipment that will effect enclosure of the open end. The standard has not changed since proposal. If a second valve is used, the standard requires the upstream valve to be closed first. After the upstream valve is completely closed, the downstream valve must be closed. This operational requirement is necessary in order to prevent trapping process fluid between the two valves, which could result in a situation equivalent to the uncontrolled open-ended valve or line.

Product accumulator vessels, pipeline flanges, and pressure relief devices in liquid service. The standard for product accumulator vessels effectively requires venting accumulator vessel emissions to a system that complies with the requirements as discussed in the *Closed-vent systems and control devices* portion of this section of the preamble. Flanges and pressure relief devices in liquid service will be excluded from the routine leak detection and repair requirements. However, if leaks are detected from these sources, the same allowable repair interval that applies to valves and pumps will apply.

Closed-vent systems and control devices. Control devices will be used to reduce benzene equipment leaks captured and transported through closed-vent systems. Reference Method 21 will be used to verify that a closed-vent system has been designed and installed properly. At proposal, control devices were required to be either enclosed combustion devices designed to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760°C or vapor recovery systems with an efficiency of 95 percent or greater. Based on review of comments on the proposed standard, EPA concluded that all reasonably designed, existing control devices for organic emissions can achieve a reduction efficiency for benzene of at least 95 percent. EPA, therefore, has not changed the requirements for control devices. EPA has made it clear, however, that an enclosed combustion device with a reduction efficiency of at least 95 percent can be used even if the residence time and minimum temperature requirements are not achieved.

Additionally, EPA decided to allow use of smokeless flares operated under certain conditions in complying with the control device requirements because EPA believes that destruction efficiencies better than 95 percent can be obtained with properly operated flares. Flares operated within these conditions are considered as alternatives to enclosed combustion devices (incinerators, catalytic incinerators, boilers, process heaters, etc.) and vapor recovery systems (such as carbon adsorbers and condensation units). They may be applied to control emissions from pump seals (or degassing reservoirs), compressor seals (or degassing reservoirs), pressure relief devices, and product accumulator vessels. The conditions include a requirement for the presence of a flame; this can be ensured by monitoring the flare's pilot light with an appropriate heat sensor, such as a thermocouple. The conditions also include requirements for smokeless operation (visible emissions are limited to less than 5 minutes in any 2-hour period) and for the heat content of gases combusted by the flare. The standards for closed vent systems and control devices permit the use of devices that have an efficiency better than 95 percent, including steam-assisted and nonassisted flares designed for and operated with an exit velocity of less than 18 m/sec. EPA has been studying the question of whether additional types of flares will also achieve better than 95 percent efficiency; if so, the Agency will revise the standards accordingly.

Reporting and recordkeeping. The promulgated standard includes reporting provisions requiring semiannual reports of leak detection and repair efforts within a process unit. The amount of reporting and the burden associated with the reporting have been reduced from those in the proposed standard. In particular, the quarterly reporting requirement in the proposed standard has been reduced to semiannual reporting. The burden associated with the recordkeeping requirements has also been reduced since proposal. However, the final standard additionally requires that records be kept of periods when a flare pilot light does not have a flame and that unsafe-to-monitor and difficult-to-monitor valves be identified.

Summary of Impacts of the Standard

The standard applies to certain equipment in benzene service. This equipment is used in the production of benzene and other chemicals and products, such as maleic anhydride, ethanol, and pharmaceuticals. The standard will affect equipment located in more than 200 existing process units and an expected 60 new process units by 1985.

The environmental, health, economic, and energy impacts are summarized here and are discussed in greater detail in the BID for the promulgated standard, "Benzene Fugitive Emissions—Background Information for Promulgated Standard," EPA–450/3–80–032b.

Environmental and health impacts. Since the standard was proposed, EPA has revised the baseline emission estimate and the estimate of benzene leaks to the atmosphere that will be reduced by the standard. The final standard will reduce emissions from existing benzene equipment leaks by about 69 percent from the baseline control level, which includes petroleum refinery CTG controls. This percentage reduction represents a decrease in emissions from about 7,920 megagrams of benzene per year (Mg/yr) to about 2,470 Mg/yr for existing equipment leaks of benzene. Implementation of the standard will result in negligible impacts on water quality and solid waste. No noise impact will result.

EPA has also revised the assessment of leukemia risk from exposure to existing equipment leaks of benzene as a result of revised emission estimates, exposure modeling techniques, and the benzene unit risk factor. In its revised estimate, EPA has calculated that the standard will reduce the estimated maximum lifetime risk for the most exposed population from about 1.5×10^{-3} at current (baseline) controls to about 4.5×10^{-4} for existing benzene equipment leaks. The standard will reduce the estimated annual incidence of leukemia (cases per year) for the public living within 20 kilometers of existing benzene equipment leaks from about 0.45 cases per year at current controls to about 0.14 cases per year. Due to the assumptions that were made in calculating these maximum lifetime risk and leukemia incidence numbers, there is uncertainty associated with the numbers presented here and elsewhere in this preamble. The use of the risk numbers is discussed in the Federal Register notice regarding the regulation of benzene as a hazardous air pollutant.

Cost and economic impacts. Since the standard was proposed, EPA has reanalyzed the cost of controlling benzene equipment leaks and the resultant benzene emission reduction for each type of equipment covered by the standard and for each control technique. In response to comments, EPA considered the costs and emission reductions associated with each type of equipment in selecting the final standard.

For existing equipment the nationwide capital cost for the standard will be about $5.5 million, and the 1985 nationwide annualized cost as a result of the standard will be about $400,000. Because the cost of the standard is mostly offset by the value of the benzene recovered by the standard and, to the extent that the cost is not completely offset, the cost is very small in comparison to the value of the product made by this equipment, product prices will not increase as a result of the standard. Thus, profits and market positions of individual manufacturers would be unchanged.

Energy impacts. The final standard will result in a positive energy impact by conserving benzene and other organic compounds that have an energy value. Implementation of the standard will result in an energy savings of about 10,000 barrels of crude oil in the fifth year of the standard.

New sources. The standard will result in positive environmental and health impacts for new equipment leaks of benzene. The magnitude of these impacts is difficult to determine because it will depend on several factors, including the location of the new equipment, the number and distribution of people living in the vicinity of the new equipment, and the level of control that would have been used in the absence of the standard. The nationwide capital and 1985 annualized costs for new equipment will depend on the level of control that would have been used in the absence of this standard. These factors cannot be determined definitely before sources are actually constructed. Because EPA recognizes this additional uncertainty in environmental and health impacts, cost and economic impacts, and energy impacts for leaks of benzene from new equipment, these impacts are not presented here. The impacts, however, will be proportionately similar to the impacts for existing sources; that is, if the standard result in less emission reduction for new sources than for existing sources (because fewer new sources would be covered), then the cost of this emission reduction will be proportionately less also.

Public Participation

Prior to proposal of the standard, interested parties were advised by public notice in the Federal Register (45 FR 18474, March 21, 1980) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the national emission standard for benzene fugitive emissions recommended for proposal. This meeting was held on April 16, 1980. The meeting was open to the public, and each attendee was given an opportunity to comment on the standard recommended for proposal. The standard was proposed in the Federal Register on January 5, 1981 (46 FR 1165). The preamble to the proposed standard discussed the availability of the BID for the proposed standard (EPA–450/3–80–032a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standard, a public hearing was held on July 14, 1981, at Research Triangle Park, North Carolina. The hearing was open to the public, and each attendee was given an opportunity to comment on the proposed standard. The public comment period was extended to September 14, 1981.

EPA received 30 comment letters on the proposed standard and BID. Industry representatives submitted most of the comments. Also commenting were representatives of State and local air pollution agencies and a representative of an environmental group. The comments have been considered carefully and, where determined to be appropriate by EPA, changes have been made to the proposed standard.

EPA published an Additional Information Document (AID) in April of 1982. The AID contains a technical discussion of methodologies and estimates of emissions, emission reductions, and cost associated with control of equipment leaks of organic compounds, including benzene. A notice of the availability of the AID and a request for comments on the AID was published in the Federal Register on May 7, 1982 (47 FR 19724). Fourteen letters were received containing comments on the AID. Comments on the AID have been considered carefully, and changes have been made to the technical aspects of EPA's analysis where appropriate.

Significant Comments and Changes to the Proposed Standard

Most of the comment letters contained multiple comments, and many of the comment letters repeated comments contained in other letters. A detailed discussion of these comments and responses can be found in the BID for the promulgated standard, which is referred to in the **ADDRESSES** section of this preamble. The comments and responses in the BID for the promulgated standard serve as the basis for the revisions that have been made to the

standard between proposal and promulgation. The major revisions to the standard are indicated in the SUMMARY OF THE STANDARD section of this preamble.

The most important comments, in addition to the comments on the listing of benzene, considered by EPA concerned whether benzene fugitive emissions warrant regulation. Benzene fugitive emissions, which are not substantially different from the emissions judged to be significant at proposal, contribute 7,900 Mg/yr: this figure reflects current controls. (EPA adjusted the control level for petroleum refineries in nonattainment areas to reflect controls required by States in accordance with EPA's Control Techniques Guideline (CTG) document. This adjustment reduced emissions, but the reduction was offset to some extent by refinements in emission factors.) Approximately 20 to 30 million people live within 20 kilometers of the 128 plants with these fugitive emissions. These people are exposed to higher levels of benzene than is the general population. Due to the lack of a demonstrated threshold for benzene's carcinogenic effects, these people not only incur a higher benzene exposure but also run greater risk of contracting leukemia due to that exposure.

EPA revised the quantitative risk assessments for this source category based on the updated emissions estimates, the revised risk factor, and the more detailed SAI human exposure model. The lifetime risk of contracting leukemia for the most exposed individuals is estimated to be about 1.5×10^{-3} for benzene fugitive emission sources, and the increased leukemia incidence as a result of exposure to the current fugitive emissions is estimated to be about 0.45 cases per year.

The number of process units emitting benzene fugitive emissions is anticipated to grow from about 240 to 310 units. These new sources would probably increase the number of people exposed to benzene emitted from this source category and increase the estimated leukemia incidence accordingly.

Based on the human carcinogenicity of benzene, the magnitude of benzene fugitive emissions, the estimated ambient benzene concentrations in the vicinity of the plants with fugitive emissions, the proximity of people to these plants, the resulting estimated maximum individual risks and estimated incidence of leukemia cases in the exposed population, the projected increase in benzene emissions as a result of new sources, the estimated reductions in emissions and health risks that can be achieved, and consideration of the uncertainties associated with the quantitative risk estimates (including effects of concurrent exposures to other substances and to other benzene emissions), EPA finds that benzene emissions from benzene fugitive emission sources pose a significant cancer risk and that the establishment of a national emission standard under Section 112 is warranted.

In this preamble, only the major comments concerning the standard for equipment leaks of benzene are addressed. Comments on the need for standards to cover emission sources of benzene (including equipment leaks of benzene) and health effects and risk assessment of exposure to benzene are addressed in detail in the **Federal Register** notice regarding the regulation of benzene as a hazardous air pollutant. Comments on minor issues, such as test methods and procedures, are addressed in detail in the BID for the promulgated standard. This preamble addresses issues concerning selection of the final standard, economic impact of the final standard, and recordkeeping and reporting requirements.

Selection of the Final Standard

EPA selected the appropriate levels of control for the benzene fugitive emissions standard in light of carcinogenic risks and technological and economic factors. EPA is requiring that the source categories selected for regulation, as a minimum, achieve emission levels reflecting best available technology considering costs, energy, and economic impacts (BAT), to control benzene emissions. After selecting BAT, EPA identified a level of control more stringent than BAT and evaluated the incremental reductions in health risks obtainable against the incremental costs and economic impacts estimated to result from the application of a more stringent alternative. As described in more detail later in this notice, EPA concluded from this evaluation that the estimated risks remaining after the application of BAT to benzene fugitive emission sources are not unreasonable in view of the costs and economic impacts of reducing risks further, and that for this reason, BAT provides an ample margin of safety to protect human health.

Many people commented on the basis for section of the proposed standard. Several commenters questioned the cost effectiveness (cost per unit of emission reduction) and impacts of Regulatory Alternatives III and IV for existing and new equipment in benzene service. Some of the commenters recommended the selection of less stringent regulatory alternatives, and some recommended the selection of a more stringent regulatory alternative. Other commenters stated that selection should be based on the cost and emission reduction impacts for each type of equipment covered by the standard instead of regulatory alternatives.

After considering these comments, EPA selected the final standards for new and existing equipment in benzene service. Selection of the basis of the final standard was a two-step process and was similar to the approach used when the standard was proposed. The first step was the selection of the best available technology (BAT). Best available technology for equipment in benzene service is technology which, in the judgment of the Administrator, is the most effective level of control considering economic, energy, and environmental impacts and any technological problems associated with the retrofitting of existing equipment. After consideration of these impacts for each alternative control technique, one set of control techniques was selected as BAT for equipment in benzene service.

After selecting certain control techniques as BAT, EPA evaluated the estimated health risks remaining after application of BAT to determine if they are unreasonable in view of health risk reductions and cost (economic) impacts that would result if a more stringent level of control were applied. This provides a comparison of the costs and economic impacts of control with the benefits of further risk reduction. The benefits of risk reduction are expressed in terms of the estimated leukemia incidence (cases per year) within 20 kilometers of the equipment covered by the standard and the estimated maximum lifetime risk at the point of maximum exposure. The results of this comparison determine whether, in the judgment of the Administrator, the residual risks remaining after application of BAT are unreasonable. If the risks remaining after application of BAT are judged to be unreasonable, further controls would be required.

The cost of the proposed control techniques for benzene equipment leaks are very small relative to the capital and operating costs of affected process units. As a consequence, none of these control techniques impact the ability of an owner or operator to raise capital or measurably impact product prices or energy requirements. Therefore, EPA selected BAT primarily based on a comparison of costs and emission reductions associated with each alternative control technique. In making

this decision, EPA is accepting the suggestions of commenters to consider further cost per unit emission reduction estimates and to consider these estimates for each type of equipment covered by the standard in the selection of BAT. In selecting BAT, EPA intitially selected control techniques that achieve the greatest emission reduction with reasonable control costs per megagram of emission reduction. The emission reductions and the average and incremental costs per megagram of benzene and total emissions (including benzene and other volatile organic compounds (VOC)) are summarized in Tables 1 and 2, respectively, for each type of equipment covered by the standard. After initially selecting one set of control techniques as BAT for each type of equipment covered by the standard, EPA analyzed economic and other impacts of this set of control techniques. To the extent that these impacts were reasonable, the control techniques were selected as BAT and then were used in estimating the risks remaining after application of BAT.

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Table 1. CONTROL COSTS PER MEGAGRAM OF BENZENE REDUCED[a]

Type of Equipment	Control Technique	Benzene Emission Reduction[b] (Mg/yr)		Average $/Mg Benzene[c]		Incremental $/Mg Benzene[d]	
		New	Existing	New	Existing	New	Existing
Valves	Annual leak detection and repair	162	799	--[e]	--[e]	--[e]	--[e]
	Quarterly leak detection and repair	639	2,750	--[e]	--[e]	--[e]	--[e]
	Monthly leak detection and repair[f]	736	3,160	--[e]	--[e]	210	120
	Sealed bellows valves	998	4,280	8,500	11,000	33,000	44,000
Pumps	Annual leak detection and repair	77	290	870	870	870	870
	Quarterly leak detection and repair	266	959	--[e]	--[e]	--[e]	--[e]
	Monthly leak detection and repair[f]	307	1,140	--[e]	--[e]	--[e]	--[e]
	Dual mechanical seal systems	372	1,360	2,100	2,400	13,000	15,000
Compressors	Degassing reservoir vents[f]	3.59	--[h]	--[e]	--[h]	--[e]	--[h]
Pressure Relief Devices	Quarterly leak detection and repair[i]	53	190	--[e]	--[e]	--[e]	--[e]
	Monthly leak detection and repair[i]	58	207	--[e]	--[e]	300	290
	Equipment control[f,i]	82	295	96	180	1,400	1,700
Open-ended Lines	Caps on open ends[f]	54	187	430	470	430	470
Sampling Connection Systems	Closed-purge sampling[f]	87	318	880	900	880	900
Product Accumulator Vessels	Closed-vent system[f]	27	106	94	97	94	97

[a]Costs and emission reductions are presented on a nationwide basis and are derived from the BID for the promulgated standard, EPA-450/3-80-032b.

[b]Benzene emission reductions are presented on a nationwide basis as explained in Docket No. A-79-27-IV-B-14.

[c]Average dollars per megagram (cost effectiveness) = net annualized cost ÷ annual benzene emission reduction. These cost-effectiveness numbers can be calculated on a component basis, on a model unit basis, or on a nationwide basis. In any case, the resulting cost effectiveness will be essentially the same. The numbers in this table have been calculated on a nationwide basis by multiplying the net annual cost per component (BID Tables A-1 through A-11) by the total number of components nationwide (BID Tables 2-6 and 2-7) and then dividing the resulting nationwide net cost by the nationwide emission reduction.

[d]Incremental dollars per megagram = (net annualized cost of the control technique - net annualized cost of the next less restrictive control technique) ÷ (annual benzene emission reduction of control technique - annual benzene emission reduction of the next less restrictive control technique).

[e]Dashes denote savings.

[f]Control technique selected as the basis for the final standard.

[g]Emission reduction associated with one new compressor.

[h]Existing compressors in benzene service are not known to exist; however, if one does, the emission reduction and control costs per megagram of benzene would be the same as for a new compressor.

[i]Costs of equipment controls for pressure relief devices are based on the following: 75 percent of relief devices are already controlled. For the remaining uncontrolled sources, 75 percent of relief devices will be vented to a flare, 12.5 percent will be controlled by rupture disk/block valve systems, and 12.5 percent will be controlled by rupture disk/3-way valve systems.

Table 2. CONTROL COSTS PER MEGAGRAM OF TOTAL EMISSIONS REDUCED[a]

Type of Equipment	Control Technique	Total Emission Reduction[b] (Mg/yr)		Average $/Mg[c]		Incremental $/Mg[d]	
		New	Existing	New	Existing	New	Existing
Valves	Annual leak detection and repair	313	1,306	--[e]	--[e]	--[e]	--[e]
	Quarterly leak detection and repair	1,005	4,440	--[e]	--[e]	--[e]	--[e]
	Monthly leak detection and repair[f]	1,150	5,090	--[e]	--[e]	140	74
	Sealed bellows valves	1,540	6,960	4,900	6,900	20,000	26,000
Pumps	Annual leak detection and repair	124	468	540	540	540	540
	Quarterly leak detection and repair	413	1,560	--[e]	--[e]	--[e]	--[e]
	Monthly leak detection and repair[f]	484	1,830	--[e]	--[e]	--[e]	--[e]
	Dual mechanical seal systems	584	2,210	1,400	1,500	8,200	8,700
Compressors	Degassing reservoir vents[f]	5.59	--[h]	--[e]	--[h]	--[e]	--[h]
Pressure Relief Devices	Quarterly leak detection and repair[i]	83	308	--[e]	--[e]	--[e]	--[e]
	Monthly leak detection and repair[i]	90	336	--[e]	--[e]	190	180
	Equipment control[f,i]	128	475	61	110	940	1,100
Open-ended Lines	Caps on open ends[f]	83	313	280	280	280	280
Sampling Connection Systems	Closed-purge sampling[f]	136	510	560	560	560	560
Product Accumulator Vessels	Closed-vent system[f]	42	171	60	60	60	60

[a]Costs and emission reductions are presented on a nationwide basis and are derived from the BID for the promulgated standard, EPA-450/3-80-032b.

[b]Total emission reductions are estimated for benzene and other VOC and are presented on a nationwide basis as explained in Docket No. A-79-27-IV-B-14.

[c]Average dollars per megagram (cost effectiveness) = net annualized cost ÷ annual emission reduction. See Table II-1, footnote c.

[d]Incremental dollars per megagram = (net annualized cost of the control technique - net annualized cost of the next less restrictive control technique) ÷ (annual emission reduction of the control technique - annual emission reduction of the next less restrictive control technique).

[e]Dashes denote savings.

[f]Control technique selected as the basis for the final standard.

[g]Emission reduction associated with one new compressor.

[h]Existing compressors in benzene service are not known to exist; however, if one does, the emission reduction and control costs per megagram of total emissions would be the same as for a new compressor.

[i]Cost of equipment controls for pressure relief devices are based on the following: 75 percent of relief devices are already controlled. For the remaining uncontrolled sources, 75 percent of relief devices will be vented to a flare, 12.5 percent will be controlled by rupture disk/block valve systems, and 12.5 percent will be controlled by rupture disk/3-way valve systems.

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For each type of equipment, the average cost effectiveness of each control technique was calculated based in the net annualized cost and the annual emission reduction from the uncontrolled level. Starting with the most stringent control technique, which achieves the greatest emission reduction at the greatest annualized cost, EPA examined the incremental cost effectiveness between the most stringent control technique and the next less restrictive control technique. The incremental cost effectiveness between any two alternative control techniques was based on the difference in net annualized costs divided by the difference in the annual emission reductions of the alternate control techniques. If the incremental cost in comparison to the incremental emission reduction is judged unreasonable, then the next increment is examined until a control technique with a reasonable incremental cost in comparison to the incremental emission reduction is available.

Costs per megagram of emission reduction (average and incremental) were calculated in terms of total emissions (benzene and other VOC) as well as benzene alone. Control of benzene equipment leaks results in the destruction of other organic compounds (mainly VOC) as well as benzene; therefore, control of VOC is an added benefit of controlling benzene. In making decisions about the acceptability of the cost of emisison reductions achieved by a control technique, it is appropriate to consider the VOC as well as the benzene emission reductions. However, VOC emission reductions were considered only in the sense that VOC emission reductions can add weight to selecting a control technique as BAT.

The basis for selecting BAT for each type of equipment in benzene service is discussed below. It should be noted that the control costs for each type of equipment do not represent the actual amounts of money spent at any particular plant site. The cost of emission reduction systems will vary according to the chemical product being produced, production equipment, plant layout, geographic location, and company preferences and policies. However, these costs and emission reductions are considered typical of control techniques for benzene equipment leaks and can be used in selecting the level of control to be required by the standard.

Valves. EPA first considered the use of sealed bellows valves. However, a requirement for sealed bellows valves is considered unreasonable. The incremental cost for the use of sealed bellows valves compared to a monthly leak detection and repair program for valves is about $49 million/yr for existing valves and results in an emission reduction of about 1,100 Mg/yr of benzene; this represents an incremental cost effectiveness of about $44,000/Mg. Furthermore, the use of sealed bellows valves results in an incremental emission reduction of 1,870 Mg/yr of total emissions (including benzene and other VOC). Because the incremental cost effectiveness ($44,000/Mg of benzene) of this control technique is relatively high and because the additional emission reduction of VOC does not add enough weight to convince EPA that the costs are reasonable, EPA decided not to require the use of sealed bellows valves.

Next, EPA considered several leak detection and repair programs for valves. The leak detection and repair programs differed in the monitoring frequency that could be implemented. As Tables 1 and 2 show, all of the monitoring programs would result in net credits because the value of recovered product resulting from implementation of each program is greater than the cost of each program. The largest emission reduction is associated with the monthly program. The incremental cost for a monthly program compared to a quarterly program is about $48,000/yr for existing valves and results in an incremental benzene emission reduction of about 400 Mg/yr; this represents an incremental cost effectiveness of about $120/Mg of benzene. Because EPA considers the incremental cost effectiveness associated with the monthly program to be reasonable, EPA selected a monthly leak detection and repair program as BAT for valves.

Pumps. The costs and emission reductions associated with the control of pumps were determined for three leak detection and repair programs and the use of dual mechanical seal systems. The incremental cost associated with the use of dual mechanical seal systems (compared to the monthly program) on existing pumps is about $3.3 million/yr and results in an incremental emission reduction of about 220 Mg/yr of benzene; this represents an incremental cost effectiveness of $15,000/Mg. Furthermore, the use of dual mechanical seal systems reduces an incremental 380 Mg/yr of total emissions (including benzene and other VOC). Because the incremental cost effectiveness ($15,000/Mg of benzene) is relatively high and because the additional emission reduction of VOC does not add enough weight to convince EPA that the costs are reasonable, EPA decided not to require the use of dual mechanical seal systems.

Next, EPA considered leak detection and repair programs for pumps. Monthly and quarterly leak detection and repair programs both result in net annual savings. The annual program results in a cost of about $250,000/yr for a benzene emission reduction of about 290 Mg/yr; this represents a cost effectiveness of about $870/Mg of benzene. EPA decided not to select an annual program as BAT because it results in higher costs and lower emission reductions in comparison to either a monthly or a quarterly program. The monthly program achieves a higher degree of control than the quarterly program at a slightly lower credit. The monthly program (compared to the quarterly program) results in a savings and an incremental emission reduction of about 180 Mg/yr of benzene; this represents an incremental cost effectiveness of essentially zero for existing pumps in benzene service. Because EPA considers the incremental cost effectiveness associated with monthly monitoring of pumps reasonable, monthly leak detection and repair was selected as BAT for pumps.

Compressors. One control technique is considered viable for compressors in benzene service—the installation of equipment such as control of the barrier fluid system. The installation of control equipment results in an emission reduction of about 3.5 Mg/yr per compressor at a savings in cost for each compressor. The control technique results in a savings because the value of product retained by controlling the barrier fluid system exceeds the cost of the control equipment. Since this cost is reasonable, control equipment was selected as BAT for compressors.

For existing compressors, EPA proposed a monthly leak detection and repair program. At proposal, EPA selected, as the basis of the standard for existing pumps and compressors, a monthly leak detection and repair program because some existing pumps could not be reasonably retrofitted with dual mechanical seal systems and because the cost of retrofitting compressors and replacing pumps was considered exorbitant in light of the resulting emissions reductions. Since proposal, EPA has concluded that the effectiveness of a leak detection and repair program for compressors in benzene service would be negligible. Also, as requested by commenters, EPA has analyzed compressors separately from pumps. This analysis yields the cost and emission reduction estimates

above. EPA has thus concluded that control equipment is reasonable for existing compressors and, therefore, selected it as BAT for existing compressors as well as new compressors.

Pressure relief devices. The annualized costs and emission reductions associated with monthly and quarterly leak detection and repair programs and with the use of control equipment (rupture disks and flares) were determined for pressure relief devices in gas service. As Tables 1 and 2 show, both the quarterly and monthly leak detection and repair programs are less expensive than installation of equipment controls, but they result in lower emission reductions. These programs result in an incremental cost effectiveness of about $300/Mg of benzene for the monthly program (compared to the quarterly program) and a credit for the quarterly program. Equipment controls would result (compared to a monthly program) in incremental emission reductions of about 90 Mg/yr of benzene and an incremental cost of about $150,000/yr. This reflects an incremental cost effectiveness of about $1,700/Mg. Because EPA considers the incremental cost effectiveness of equipment controls reasonable, equipment controls were selected as BAT for pressure relief devices.

Open-ended lines, sampling connection systems, and product accumulator vessels. EPA considered caps or closures as the control technique for the standard for open-ended lines. Costs of $430/Mg and $470/Mg of benzene are reasonable for controlling equipment leaks of benzene from new and existing open-ended lines, respectively. EPA selected caps or closures as BAT for open-ended lines.

EPA considered closed-purge sampling as the control technique for the standard for sampling systems. Costs of $880/Mg and $900/Mg of benzene are reasonable for controlling equipment leaks of benzene from new and existing sampling systems, respectively. EPA selected closed-purge sampling as BAT for sampling systems.

EPA considered closed-vent systems connected to a control device as the control technique for the final standard for product accumulator vessels. For existing units in benzene service, the installation of closed-vent systems connected to a control device will result in a nationwide net annual cost of $10,300 and an annual emission reduction of about 100 Mg of benzene; this represents a cost effectiveness of about $100/Mg. Since the cost associated with this control technique is reasonable, EPA selected closed-vent systems as BAT for product accumulator vessels.

New sources. Emission reductions and costs for new sources are similar to those for existing sources. If the standard results in less emission reduction for new sources than for existing sources (because fewer new sources would be covered), then the cost of the emission reduction for new sources will be less. However, as seen in Tables 1 and 2, the costs that are unreasonable for existing sources are also unreasonable for new sources; therefore, BAT for new sources is the same as BAT for existing sources.

Economic impact considerations of BAT. As mentioned above, once BAT was identified for each type of equipment covered by the standard, EPA analyzed the economic impact of the initial set of BAT control techniques. As a result and as explained in the next section of this preamble, EPA concluded that the control techniques initially selected as BAT have reasonable economic impacts. In addition, EPA has also concluded that other impacts, environmental and energy, associated with these control techniques are reasonable. Thus, they were selected as BAT for equipment in benzene service.

Selection of the final standards. After selecting certain control techniques as BAT (those identified above), EPA evaluated the estimated health risks remaining after application of BAT to determine if they are unreasonable in view of health risk reductions and cost (economic) impacts that would result if a more stringent level of control were applied. Because the most stringent, viable control technique for each type of equipment covered by the standard is already selected for all types of equipment except for valves and pumps, EPA identified a more stringent level of control by reviewing the control techniques for valves and pumps. The more stringent level of control used for this anaylsis includes the use of dual mechanical seal systems on pumps in addition to the requirements selected as BAT. This control technique was selected for analysis because it adds the next most cost-beneficial control technique. Thus, if EPA decided not to require this control technique in addition to those control techniques selected as BAT, then EPA would not require less cost-beneficial control techniques, such as sealed bellows valves.

Health and cost impacts were first examined for existing equipment covered by the standard to determine whether a more stringent level of control should be required. Requiring a more stringent level of control instead of BAT would reduce estimated leukemia incidence within 20 kilometers of the equipment covered by the standard from about 0.14 cases per year to about 0.13 cases per year for existing equipment. It would reduce the estimated maximum lifetime risk at the point of maximum exposure from about 4.5×10^{-4} to about 4.2×10^{-4}. Requiring the more stringent level of control rather than BAT would increase capital cost from $5.5 million to $19.5 million and would increase 1985 net annualized costs from $400,000 to a cost of $3.7 million for existing equipment. Because of the relatively small health benefits to be gained with the additional costs of requiring the more stringent level of control instead of BAT for existing equipment, EPA considers the risks remaining after application of BAT to existing equipment not to be unreasonable. For this reason, EPA judged the level of control selected as BAT to provide an ample margin of safety and decided not to require a more stringent level of control than BAT for existing equipment.

Health and cost impacts were next examined for new equipment covered by the standard to determine whether a more stringent control level should be required. As with existing equipment, EPA considered the use of dual mechanical seal systems on pumps as the more stringent control level that is next most cost-beneficial. Thus, if EPA decides not to require the use of these seals, then EPA would not require less cost beneficial control technologies, such as sealed bellows valves. Requiring the more stringent level of control—the use of dual mechanical seals on pumps in addition to BAT—could reduce estimated leukemia incidence within 20 kilometers of the equipment covered by the standard from about 0.034 cases per year to about 0.032 cases per year for new equipment. It would reduce the estimated maximum lifetime risk at the point of maximum exposure from about 4.5×10^{-4} to about 4.2×10^{-4}. Requiring the more stringent level of control rather than BAT would increase capital cost from $1.4 million to $5.1 million and net annualized costs of $100,000 to $900,000 for new equipment. Because of the relatively small health benefits to be gained with the additional costs of requiring the more stringent level of control instead of BAT for new equipment, EPA considers the risks remaining after application of BAT to new equipment not to be unreasonable. For this reason, EPA judged the level of control selected as BAT to provide an ample margin of safety and decided not

to require a more stringent level of control than BAT for new equipment.

Economic Impacts of the Final Standard

The cost of the proposed standard is discussed in Chapter 8 of the BID for the proposed standard, and economic impacts are discussed in Chapter 9. Changes made to the standard since proposal make the annualized cost of the final standard smaller than the annualized cost for the proposed standard. The 1985 net annualized cost of the final standard is $400,000 for existing units and $100,000 for new units. The BID for the proposed standard concludes that any potential price increases resulting from imposition of the proposed standard would be well under 1 percent and that the profits and market positions of individual manufacturers would not be changed. In view of the lower cost of the final standard, these conclusions can be underscored.

Comments and responses in this section are addressed in three categories: impacts on small facilities, cost effectiveness, and benefit-cost considerations. This categorization is not rigid because some comments are quite broad.

Impacts on small plants. This subsection addresses two principal concerns: the effect of the standard on small businesses, and the application of the standard to small process units and to process units that use minor amounts of benzene or that use benzene intermittently.

The Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980) directs Federal agencies to pay close attention to minimizing any potentially adverse impacts of a standard on small businesses, small governments, and small organizations. Accordingly, EPA has reviewed the final standard in accordance with the Regulatory Flexibility Act. This standard will have no known effects on small governments and small organizations. A small business in the benzene-using industries generally is one that employs fewer than 750 persons. This level was set by the Small Business Administration (SBA) as a criterion for extending SBA loans and related assistance (13 CFR Part 121, Schedule A). The definition applies to firms that manufacture cyclic crudes and cyclic intermediates, pharmaceuticals, and many other chemicals. The BID for the proposed standard lists 77 existing companies that may be affected by the standard. Most of these companies manufacture cyclic crudes and many other chemicals. With the possible exception of two companies, all of these firms either employ more than 750 persons, or are subsidiaries of large firms. To the extent these two companies are small businesses, the impacts of the standard will be few and minor. Because the standard is expected to result in small annualized costs, EPA concluded that there will be no adverse impacts on firms regardless of whether they are a small business or not.

One commenter felt that the leak detection and repair requirements would impose substantial costs on small-volume users of benzene with no appreciable benefit to public health. According to the commenter, small-volume pipeline systems at pharmaceutical plants may contain several hundred valves that would need to be monitored monthly when in benzene service. The commenter added that the economic and administrative burden of complying with the standard would be heavy for small-volume users, as compared to large benzene production units, in proportion to the level of equipment leaks from such facilities.

As discussed in section 2.8.1 of the BID for the promulgated standard, EPA is exempting from the standard equipment at plant sites that are designed to produce or use 1,000 Mg/yr or less of benzene. This cutoff is based on the amount of equipment in a process unit and relates this amount to a design production rate. The 1,000 Mg/yr exemption would exclude most research facilities, pilot plants, and intermittent users of benzene from the standard.

The possibility that pharmaceutical operations could be adversely affected by the standard is very small. This is true for several reasons. First, most pharmaceutical plants use very little benzene. According to estimates contained in *Market Input/Output Studies—Benzene Consumption as a Solvent* (EPA–560/6–77–034, October 1978, p. 41), 1978 benzene consumption by pharmaceutical manufacturers was about 0.72 Gg. No companies consumed more than 1,000 Mg/yr in 1978. The commenter states that they consumed about 325 Mg/yr during 1981. Thus, it is unlikely that pharmaceutical operations would be affected by the standard because the final standard exempts equipment at plant sites that are designed to produce or use 1,000 Mg/yr or less of benzene. Second, benzene consumption by the pharmaceutical industry is declining rapidly. The market input/output study just noted estimates that consumption declined from 2.14 Gg in 1976 to 0.72 Gg in 1978, a decline of about 66 percent over the 2-year period. Third, the number of companies using benzene has also declined and is expected to continue to fall. For the 2-year period 1976 to 1978, the study estimates that the number of pharmaceutical companies using benzene declined from 10 to 5. And finally, even though pharmaceutical operations that are designed to produce or use benzene in excess of 1,000 Mg/yr are subject to the standard, they have substantial equipment inventories in benzene service, and, therefore, emit benzene in enough quantity to warrant coverage by the final standard. EPA has reviewed the cost for these operations and has concluded that the cost is reasonable.

Use of cost effectiveness. Commenters felt that EPA had not selected the most cost-effective alternative as the basis for the proposed standard. One commenter said that industry's experience in air pollution abatement control programs has led it to conclude that capital costs in excess of $3,000/Mg are not cost effective and should be rejected unless the other alternatives do not substantially achieve the necessary degree of control. The commenter concluded that SOCMI data indicate that the cost effectiveness is definitely higher than the industry guideline of $3,000/Mg.

Selection of BAT was based, in response to these commenters, on an examination of the incremental cost effectiveness among various control techniques for each type of equipment covered by the standard. Whether to require more restrictive control than BAT is based on judging the risks remaining after BAT is applied and the cost and other impacts of reducing these risks. Since proposal, EPA has selected a less restrictive standard than the standard proposed in January 1981; consequently, the cost associated with the standard has decreased.

EPA based emission estimates on refinery emission factors rather than on SOCMI emission factors because recent benzene-specific emission data from refineries and chemical plants are more similar to refining units than to SOCMI units. Therefore, the commenter's conclusion that SOCMI data (discussed in "Fugitive Emission Sources of Organic Compounds—Additional Information on Emissions, Emission Reductions, and Costs," EPA–450/3–82–010) indicate that the cost effectiveness is higher than the industry guideline of $3,000/Mg is not based on the same emission estimates used by EPA. Also in contrast to the commenter, EPA bases cost effectiveness of a standard on net annualized costs rather than on capital costs. It is unclear how the commenter estimated what they called "operating

costs." Using 1985 net annualized costs, however, the overall cost effectiveness for the standard is reasonable ($77/Mg of benzene).

Another commenter felt that cost effectiveness dictates that Alternative IV at a minimum, or preferably Alternative V, should have been selected instead of Alternative III in order to fulfill the mandate of Section 112. This judgment is based on the commenter's observation that the net price increase would be less than one-fourth of 1 percent in benzene prices for Alternative IV and less than 4 percent for Alternative V. The commenter considered this a "trivial price to pay for saving additional lives," noting that, in rulemaking on the vinyl chloride standard in 1975, EPA decided that a price impact as high as 10 percent would have been acceptable. The commenter added that cost estimates are usually exaggerated, and firms often develop innovative, less costly compliance techniques.

EPA has selected the final standard after considering whether the risk that remains after application of BAT warrants the incremental cost of additional control. In analyzing the cost of the standard, EPA has made reasonable attempts to ensure that the cost is not underestimated. Even though industry sometimes may develop less costly compliance techniques, EPA considers its cost estimates reasonable. Based on these cost estimates, EPA judges that the reduction in risk that remains after application of BAT does not warrant the incremental cost of additional control.

Reporting Requirements

One commenter felt that the reporting requirements are purely for the ease of enforcement purposes, for data collection purposes, and require the submittal of duplicate information. The commenter suggested that EPA either delete the requirements or justify the need for the routine reporting requirements in determining compliance with the standard. Other commenters recognized the need for reports but suggested changes to the requirements. One commenter suggested that after submitting the initial report, plants should report only changes in the number of valves or leaks detected and repaired. Other commenters recommended that only leaks not repaired should be reported quarterly and that reporting the number of valves in each process unit is unnecessary since the number rarely changes. One of the commenters added that records of details of unsuccessful repair attempts, while possibly of interest to the owner or operator, should not be made a reporting requirement.

Effective enforcement of standards, such as this one, is important. In doing this, public officials must implement enforcement programs that are efficient in order to reduce the cost of enforcement. Reporting requirements are very helpful for effective and efficient enforcement of the standard. Contrary to what one commenter suggests, EPA is not establishing reporting requirements for the purpose of data collection and has reviewed the requirements to reduce possibly duplicative requirements. Reports will be used in a meaningful manner in conjunction with records and inspections to enforce the standard.

Reporting is an effective mechanism for reducing the cost of enforcement because reports reduce the amount of time required to conduct inspections and make it possible to reduce the number of inspections conducted by enforcement personnel. In response to comments, however, the standard was changed to require semiannual rather than quarterly reports since proposal. Semiannual reports cost less to industry than quarterly reports, and they better indicate to enforcement personnel the efforts of plants to control equipment leaks than quarterly reports. Thus, EPA changed the reporting frequency from quarterly to semiannual.

Also, in response to the comments on reporting requirements, EPA reduced the amount of information that must be reported by the plant owner or operator. The information required in reports is the same information that a plant manager would likely want to evaluate his or her program. The report will include the number of leaks that occurred within the process unit during the reporting period, the number of leaks that could not be repaired within 15 days, and the general reasons for unsuccessful or delay of repair past the 15-day period. Since no reporting format is required by the standard, reports required by other regulations may simply be photocopied and submitted in compliance with the standard for equipment leaks of benzene as long as the report satisfies the informational requirements of § 61.247.

The requirement to report reasons for unsuccessful or delay of repair is necessary to allow EPA to assess whether the owner or operator is making reasonable attempts at repair and understands the workings of the standard. EPA expects that delays will occur only because repair would result in process unit shutdown. Such delays can be readily explained by the owner or operator. Since EPA does not expect many of these delays to occur, EPA considers reporting the reasons for them to be reasonable. The requirement to report the number of leaks found will assist EPA in determining whether the number of leaks not repaired within 15 days indicates reasonable attempts at repair. EPA will gauge the significance of the number of leaks not repaired within 15 days in relation to the number leaks found.

The requirements in the final standard involve recordkeeping along with reporting. This provides enforcement of the standard in an effective and efficient manner. It should fit well with management of the standard by plant personnel. The recordkeeping requirements are the minimum that could be implemented without precluding the possibility of enforcing the standard. The recordkeeping requirements are essentially the same as those proposed and reflect a level of documentation that plant personnel would require to evaluate implementation of the standard. Without retrospective data, inspections would be useless and reporting would be impossible. In the proposed standards, EPA included a requirement to report leak location and I.D. number. This would have allowed EPA to determine whether certain equipment leaks of benzene in a plant were causing repeated problems. However, in order to reduce reporting requirements for industry and to reduce EPA review requirements, EPA has decided to eliminate leak location and I.D. number from the reporting requirements.

During the first 2 years of the program, the average annual burden of reporting and recordkeeping to industry would be about 20 person-years. The burden is distributed among about 240 process units and, on an annual basis, represents about 1 person-month per process unit. Over the same period, the average annual burden of reporting, recordkeeping, and inspections to EPA would be about 10 person-years. This program provides a reasonable level of compliance monitoring.

Incorporation of Volatile Hazardous Air Pollutant Standards

Other standards for volatile hazardous air pollutants (VHAP), if established, will likely be similar to the standard selected by EPA for equipment leaks of benzene. [This will occur unless, for a specific VHAP, BAT is different, or EPA selects a control level associated with a technology more stringent than BAT.] Subpart V (40 CFR Part 61) is being promulgated as

requirements for equipment leaks of VHAP. Subpart J, which promulgates the specific standard for equipment leaks of benzene, refers to Subpart V as the substantive requirements for all the sources covered by Subpart J. Standards for other VHAP, if proposed, would use Subpart V as a general guideline for the standard for equipment leaks of the VHAP. The technology selected as the basis for Subpart J would be used as the basis for the analyses of other VHAP. This provides an extra degree of certainty for public commenters and an effective mechanism to incorporate appropriate technological changes to all standards for equipment leaks of VHAP.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and final standard EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review, except for interagency review materials [section 307(d)(7)(A)].

Miscellaneous

The effective date of this regulation is June 6, 1984. Section 112 of the Clean Air Act provides that national emission standards for hazardous air polutants become effective upon promulgation and apply to all existing and new sources.

As prescribed by section 112, promulgation of this standard was preceded by the Administrator's determination that benzene presents a significant carcinogenic risk to human health and is, therefore, a hazardous air pollutant as defined in section 112(a)(1) of the Act. Benzene was added to the list of hazardous air pollutants on June 8, 1977. In accordance with section 117 of the Act, publication of this promulgated standard was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, members of the benzene task group of the Interagency Regulatory Liaison Group (IRLG), representing the EPA, the OSHA, the Food and Drug Administration, and the Consumer Product Safety Commission, have met (when the IRLG existed) and reviewed the standard to ensure that each rule is jointly understood and is consistent with their programs.

An economic impact assessment was prepared for the regulation and for other regulatory alternatives. The economic impact assessment for the standard is included in the BID for the proposed and promulgated standard.

The Paperwork Reduction Act (PRA) of 1980 (Pub. L. 96–511) requires clearance from the Office of Management and Budget (OMB) of reporting and recordkeeping requirements that qualify as an "information collection request" under the PRA, which affect 10 or more plants for the standard. OMB is currently clearing information collection requests for a period of 2 years. For the purposes of OMB's review, an analysis of the burden associated with the reporting and recordkeeping requirements of this regulation has been made. During the first 2 years of this regulation, the average annual burden of the reporting and recordkeeping requirements for the benzene fugitive standard would be about 20 person-years, based on an average of about 240 process units per year.

Information collection requirements associated with this regulation (Subpart A and Subpart J of Part 61) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0068.

Under Executive Order 12291, the EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that this regulation will result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." This regulation is not major because: (1) Nationwide annual compliance costs are not as great as the threshold of $100 million; (2) the standard does not significantly increase prices or production costs; and (3) the standard does not cause significant, adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

This regulation was submitted to the OMB for review as required by Executive Order 12291. Any comments from the OMB to the EPA and any EPA response to those comments are included in Docket No. A–79–27 (benzene fugitive). The docket is available for public inspection at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

The Regulatory Flexibility Act of 1980 requires that adverse effects of all Federal regulations upon small businesses be identified. According to current Small Business Administration guidelines, a small business that manufactures cyclic crudes and cyclic intermediates, pharmaceuticals, and many other chemicals is one that has 750 employees or fewer. Currently, very few of the businesses in the existing industry employ fewer than 750 people. Even if facilities owned by small businesses do become subject to the standard, none will be affected adversely. This conclusion is based on the fact that, in doing the economic analysis for the benzene fugitives standard, the price increase and profitability impacts have been estimated from the perspective of the smaller process units in operation. Therefore, the finding that the annualized cost of the standard will be very small (about $2,000/yr) for units affected by the standard accurately reflects the impacts for benzene fugitive facilities owned by small businesses.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

Dated: May 23, 1984.

William D. Ruckelshaus,

Administrator.

PART 61—[AMENDED]

40 CFR Part 61 is amended by adding Subparts J and V and by adding three subparagraphs to paragraph (a) of §61.18 as follows:

1. By adding Subparts J and V to 40 CFR Part 61 as follows:

Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

Sec.

61.110 Applicability and designation of sources.

61.111 Definitions.

61.112 Standards.

61.113–61.119 [Reserved].

* * * * *

Subpart V—National Emission Standard for Equipment Leaks (Fugitive Emission Sources)

Sec.
61.240 Applicability and designation of sources.
61.241 Definitions.
61.242–1 Standards: General.
61.242–2 Standards: Pumps.
61.242–3 Standards: Compressors.
61.242–4 Standards: Pressure relief devices in gas/vapor service.
61.242–5 Standards: Sampling connection systems.
61.242–6 Standards: Open-ended valves or lines.
61.242–7 Standards: Valves.
61.242–8 Standards: Pressure relief devices in liquid service and flanges and other connectors.
61.242–9 Standards: Product accumulator vessels.
61.242–10 Standards: Delay of repair.
61.242–11 Standards: Closed-vent systems and control devices.
61.243–1 Alternative standrds for valves in UHAP Service—allowable percentage of valves leaking.
61.243–2 Alternative standards for valves in VHAP service—skip period leak detection and repair.
61.244 Alternative means of emission limitation.
61.245 Test methods and procedures.
61.246 Recordkeeping requirements.
61.247 Reporting requirements.

Authority: Sections 112 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7412, 7601(a)], and additional authority as noted below.

Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

§ 61.110 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in benzene service: pumps, compressors, pressure relief devices, sampling connections, systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems required by this subpart.

(b) The provisions of this subpart do not apply to sources located in coke by-product plants.

(c)(1) If an owner or operator applies for one of the exemptions in this paragraph, then the owner or operator shall maintain records as required in § 61.246(i).

(2) Any equipment in benzene service that is located at a plant site designed to produce or use less than 1,000 megagrams of benzene per year is exempt from the requirements of § 61.112.

(3) Any process unit (defined in § 61.241) that has no equipment in benzene service is exempt from the requirements of § 61.112.

(d) While the provisions of this subpart are effective, a source to which this subpart applies that is also subject to the provisions of 40 CFR Part 60 only will be required to comply with the provisions of this subpart.

§ 61.111 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, or in Subpart V of Part 61, and the following terms shall have the specific meanings given them:

"In benzene service" means that a piece of equipment either contains or contacts a fluid (Liquid or gas) that is at least 10 percent benzene by weight as determined according to the provisions of § 61.245(d). The provisions of § 61.245(d) also specify how to determine that a piece of equipment is not in benzene service.

"Semiannual" means a 6-month period; the first semiannual period concludes on the last day of the last month during the 180 days following initial startup for new sources; and the first semiannual period concludes on the last day of the last full month during the 180 days after June 6, 1984 for existing sources.

§ 61.112 Standards.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of Subpart V of this part.

(b) An owner or operator may elect to comply with the requirements of § 61.243–1 and § 61.243–2.

(c) An owner or operator may apply to the Administrator for a determination of an alternative means of emission limitation that achieves a reduction in emissions of benzene at least equivalent to the reduction in emissions of benzene achieved by the controls required in this subpart. In doing so, the owner or operator shall comply with requirements of § 61.244.

§ 61.113–61.119 [Reserved]

* * * * *

Subpart V—National Emission Standard for Equipment Leaks (Fugitive Emission Sources)

§ 61.240 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in volatile hazardous air pollutant (VHAP) service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems required by this subpart.

(b) The provisions of this subpart apply to the sources listed in paragraph (a) after the date of promulgation of a specific subpart in Part 61.

(c) While the provisions of this subpart are effective, a source to which this subpart applies that is also subject to the provisions of 40 CFR Part 60 only will be required to comply with the provisions of this subpart.

§ 61.241 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 61, or in specific subparts of Part 61; and the following terms shall have specific meaning given them:

"Closed-vent system" means a system that is not open to atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

"Connector" means, flanged, screwed, welded, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment.

"Control device" means an enclosed combustion device, vapor recovery system, or flare.

"Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

"Equipment" means each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, flange or other connector, product accumulator vessel in VHAP service, and any control devices or systems required by this subpart.

"First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to atmosphere using best practices.

"In gas/vapor service" means that a piece of equipment contains process fluid that is in the gaseous state at operating conditions.

"In liquid service" means that a piece of equipment is not in gas/vapor service.

"*In-situ* sampling systems" means nonextractive samplers or in-line samplers.

"In vacuum service" means that equipment is operating at an internal pressure which is at least 5 kilopascals (kPa) below ambient pressure.

"In VHAP service" means that a piece of equipment either contains or contacts

a fluid (liquid or gas) that is at least 10 percent by weight a volatile hazardous air pollutant (VHAP) as determined according to the provisions of § 61.245(d). The provisions of § 61.245(d) also specify how to determine that a piece of equipment is not in VHAP service.

"In VOC service" means, for the purposes of this subpart, that (a) the piece of equipment contains or contacts a process fluid that is at least 10 percent VOC by weight (see 40 CFR 60.2 for the definition of volatile organic compound or VOC and 40 CFR 60.458(d) to determine whether a piece of equipment is not in VOC service) and (b) the piece of equipment is not in liquid service as defined in 40 CFR 60.481.

"Open-ended valve or line" means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

"Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

"Process unit" means equipment assembled to produce a VHAP or its derivatives as intermediates or final products, or equipment assembled to use a VHAP in the production of a product. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient product storage facilities.

"Process unit shutdown" means a work practice or operational procedure that stops production from a process unit or part of a process unit. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

"Product accumulator vessel" means any distillate receiver, bottoms receiver, surge control vessel, or product separator in VHAP service that is vented to atmosphere either directly or through a vacuum-producing system. A product accumulator vessel is in VHAP service if the liquid or the vapor in the vessel is at least 10 percent by weight VHAP.

"Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak as indicated by one of the following: an instrument reading of 10,000 ppm or greater, indication of liquids dripping, or indication by a sensor that a seal or barrier fluid system has failed.

"Semiannual" means a 6-month period; the first semiannual period concludes on the last day of the last month during the 180 days following initial startup for new sources; and the first semiannual period concludes on the last day of the last full month during the 180 days after the effective date of a specific subpart that references this subpart.

"Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

"Volatile Hazardous Air Pollutant" or "VHAP" means a substance regulated under this subpart for which a standard for equipment leaks of the substance has been proposed and promulgated. Benzene is a VHAP.

§ 61.242-1 Standards: General.

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of § 61.242-1 to § 61.242-11 for each new and existing source as required in 40 CFR 61.05, except as provided in § 61.243 and § 61.244.

(b) Compliance with this subpart will be detemined by review of records, review of performance test results, and inspection using the methods and procedures specified in § 61.245.

(c)(1) An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 61.242-2, 61.242-3, 61.242-5, 61.242-7, 61.242-8, 61.242-9 and 61.242-11 as provided in § 61.244.

(2) If the Administrator makes a determination that a means of emission limitation is at least a permissible alternative to the requirements of §§ 61.242-2, 61.242-3, 61.242-5, 61.242-6, 61.242-7, 61.242-8, 61.242-9 or 61.242-11, an owner or operator shall comply with the requirements of that determination.

(d) Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinquished readily from other pieces of equipment.

(e) Equipment that is in vacuum service is excluded from the requirements of § 61.242-2, to § 61.242-11 if it is identified as required in § 61.246(e)(5).

§ 61.242-2 Standards: Pumps.

(a)(1) Each pump shall be monitored monthly to detect leaks by the methods specified in § 61.245(b), except as provided in § 61.242-1(c) and paragraphs (d), (e), and (f) of this section.

(2) Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) if an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.242-10.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of pargraph (a), provided the following requirements are met:

(1) Each dual mechanical seal system is:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(ii) Equipped with a barrier fluid degassing reservior that is connected by a closed-vent system to a control device that complies with the requirements of § 61.242-11; or

(iii) Equipped with a system that purges the barrier fluid into a process stream with zero VHAP emissions to atmosphere.

(2) The barrier fluid is not in VHAP service and, if the pump is covered by standards under 40 CFR Part 60, is not in VOC service.

(3) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(5)(i) Each sensor as described in paragraph (d)(3) of this section is checked daily or is equipped with a audible alarm, and

(ii) The owner or operator determines, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii), a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is

detected, except as provided in § 61.242–10.

(iii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 61.246(e)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) if the pump:

(1) Has no externally actuated shaft penetrating the pump housing.

(2) Is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 61.245(c), and

(3) Is tested for compliance with paragraph (e)(2) initially upon designation, annually, and at other times requested by the Administrator.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 61.242–11, it is exempt from the requirements of paragraphs (a)–(e).

§ 61.242–3 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to atmosphere, except as provided in § 61.242–1(c) and paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) shall be:

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure; or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 61.242–11; or

(3) Equipped with a system that purges the barrier fluid into a process stream with zero VHAP emissions to atmosphere.

(c) The barrier fluid shall not be in VHAP service and, if the compressor is covered by standards under 40 CFR Part 60, shall not be in VOC service.

(d) Each barrier fluid system as described in paragraphs (a)–(c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) shall be checked daily or shall be equipped with an audible alarm.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.242–10.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § 61.242–11, except as provided in paragraph (i).

(i) Any Compressor that is designated, as described in § 61.246(e)(2), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a)–(h) if the compressor:

(1) Is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 61.245(c); and

(2) Is tested for compliance with paragraph (i)(1) initially upon designation, annually, and at other times requested by the Administrator.

§ 61.242–4 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 61.245(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 61.245(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 61.242–11 is exempt from the requirements of paragraphs (a) and (b).

§ 61.242–5 Standards: Sampling connecting systems.

(a) Each sampling connection system shall be equipped with a closed-purge system or closed vent system, except as provided in § 61.242–1(c).

(b) Each closed-purge system or closed-vent system as required in paragraph (a) shall:

(1) Return the purged process fluid directly to the process line with zero VHAP emissions to atmosphere; or

(2) Collect and recycle the purged process fluid with zero VHAP emissions to atmosphere; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of § 61.242–11.

(c) *In-situ* sampling systems are exempt from the requirements of paragraphs (a) and (b).

§ 61.242–6 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 61.242–1(c).

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) at all other times.

§ 61.242–7 Standards: Valves.

(a) Each valve shall be monitored monthly to detect leaks by the method specified in § 61.245(b) and shall comply with paragraphs (b)–(e), except as provided in paragraphs (f), (g), and (h) of this section, §§ 61.243–1 or 61.243–2, and § 61.242–1(c).

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for 2 successive months may be monitored the first month of every quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 61.242–10.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts;

(2) Replacement of bonnet bolts;

(3) Tightening of packing gland nuts; and

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in § 61.246(e)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) if the valve:

(1) Has no external actuating mechanism in contact with the process fluid;

(2) Is operated with emissions less than 500 ppm above background, as measured by the method specified in § 61.245(c); and

(3) Is tested for compliance with paragraph (f)(2) initially upon designation, annually, and at other times requested by the Administrator.

(g) Any valve that is designated, as described in § 61.246(f)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) if:

(1) The owner or operator of the valve demonstrates that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a); and

(2) The owner or operator of the valve has a written plan that requires monitoring of the valve as frequent as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in § 61.246(f)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) if:

(1) The owner or operator of the valve demonstrates that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface;

(2) The process unit within which the valve is located is an existing process unit; and

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

§ 61.242–8 Standards: Pressure relief devices in liquid service and flanges and other connectors.

(a) Pressure relief devices in liquid service and flanges and other connectors shall be monitored within 5 days by the method specified in § 61.245(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.242–10.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 61.242–7(e).

§ 61.242–9 Standards: Product accumulator vessels.

Each product accumulator vessel shall be equipped with a closed-vent system capable of capturing and transporting any leakage from the vessel to a control device as described in § 61.242–11.

§ 61.242–10 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the process and that does not remain in VHAP service.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator demonstrates that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair, and

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § 61.242–11.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system, and

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next process unit shutdown will not be allowed unless the next process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

§61.242–11 Standards: Closed-vent systems and control devices.

(a) Owners or operators of closed-vent systems and control devices used to comply with provisions of this subpart shall comply with the provisions of this section.

(b) Vapor recovery systems (for example, condensers and adsorbers) shall be designed and operated to recover the organic vapors vented to them with an efficiency of 95 percent or greater.

(c) Enclosed combustion devices shall be designed and operated to reduce the VHAP emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760°C.

(d)(1) Flares shall be designed for an operated with no visible emissions as determined by the methods specified in § 61.245(e), except for periods not to exceed a total of 5 minutes during any 1 consecutive hours.

(2) Flares shall be operated with a flame present at all times, as determined by the methods specified in § 61.245.(e).

(3) Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted being 7.45 MJ/scm or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the method specified in § 61.245(e).

(4) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the method specified in § 61.245(e)(4), less than 18 m/sec (60 ft/sec).

(5) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity, v_{max}, as determined by the method specified in § 61.245(e)(5).

(6) Flares used comply with this subpart shall be steam-assisted, air-assisted, or nonassisted.

(e) Owners or operators of control devices that are used to comply with the provisions of this supbart shall monitor

these control devices to ensure that they are operated and maintained in conformance with their design.

(f)(1) Closed-vent systems shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified as § 61.245(c).

(2) Closed-event systems shall be monitored to determine compliance with this section initially in accordance with § 61.05, annually, and at other times requested by the administrator.

(3) Leaks, as indicated by an instrument reading greater than 500 ppm and visual inspections, shall be repaired as soon as practicable, but not later than 15 calendar days after the leak is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(g) Closed-vent systems and control devices use to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

§ 61.243–1 Alternative standards for valves in VHAP service—allowable percentage of valves leaking.

(a) An owner or operator may elect to have all valves within a process unit to comply with an allowable percentage of valves leaking of equal to or less than 2.0 percent.

(b) The following requirements shall be met if an owner or operator decides to comply with an allowable percentage of valves leaking:

(1) An owner or operator must notify the Administrator that the owner or operator has elected to have all valves within a process unit to comply with the allowable percentage of valves leaking before implementing this alternative standard, as specified in § 61.247(d).

(2) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Administrator.

(3) If a valve leak is detected, it shall be repaired in accordance with § 61.242–7(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves in VHAP service within the process unit shall be monitored within 1 week by the methods specified in § 61.245(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves in VHAP service for which leaks are detected by the number of valves in VHAP service within the process unit.

(d) Owner or operators who elect to have all valves comply with this alternative standard shall not have a process unit with a leak percentage greater than 2.0 percent.

(e) If an owner or operator decides no longer to comply with § 61.243–1, the owner or operator must notify the Administrator in writing that the work practice standard described in § 61.242–7(a)-(e) will be followed.

§ 61.243–2 Alternative standards for valves in VHAP service—skip period leak detection and repair.

(a)(1) An owner or operator may elect for all valves within a process unit to comply with one of the alternative work practices specified in paragraphs (b)(2) and (3) of this section.

(2) An owner or operator must notify the Administrator before implementing one of the alternative work practices, as specified in § 61.247(d).

(b)(1) An owner or operator shall comply initially with the requirements for valves, as described in § 61.242–7.

(2) After 2 consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2.0, an owner or operator may begin to skip 1 of the quarterly leak detection periods for the valves in VHAP service.

(3) After 5 consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2.0, an owner or operator may begin to skip 3 of the quartely leak detection periods for the valves in VHAP service.

(4) If the percentage of valves leaking is greater than 2.0, the owner or operator shall comply with the requirements as described in § 61.242–7 but may again elect to use this section.

§ 61.244 Alternative means of emission limitation.

(a) Permission to use an alternative means of emission limitation under Section 112(e)(3) of the Clean Air Act shall be governed by the following procedures:

(b) Where the standard is an equipment, design, or operational requirement:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying test data for an alternative means of emission limitation.

(2) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(3) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the equipment, design, and operational requirements.

(c) Where the standard is a work practice:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying test data for an alternative means of emission limitation.

(2) For each source for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(3) For each source for which permission is requested, the emission reduction achieved by the alternative means of emission limitation shall be demonstrated.

(4) Each owner or operator applying for permission shall commit in writing each source to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practices.

(5) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (c)(4).

(6) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the required work practices of this subpart.

(d) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(e)(1) Manufacturers of equipment used to control equipment leaks of a VHAP may apply to the Administrator for permission for an alternative means of emission limitation that achieves a reduction in emissions of the VHAP achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraphs (b), (c), and (d).

§ 61.245 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Monitoring, as required in § 61.242, § 61.243, and § 61.244, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the

procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 3 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in §§ 61.242–2(e), 61.242–3(i), 61.242–4, 61.242–7(f), and 61.242–11(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1)–(4) shall apply.

(2) The background level shall be determined, as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 655 upm for determining compliance.

(d)(1) Each piece of equipment within a process unit that can conceivably contain equipment in VHAP service is presumed to be in VHAP service unless an owner or operator demonstrates that the piece of equipment is not in VHAP service. For a piece of equipment to be considered not in VHAP service, it must be determined that the percent VHAP content can be reasonably expected never to exceed 10 percent by weight. For purposes of determining the percent VHAP content of the process fluid that is contained in or contacts equipment, procedures that conform to the methods described in ASTM Method D–2267 (incorporated by the reference as specified in § 61.18) shall be used.

(2)(i) An owner or operator may use engineering judgment rather than the procedures in paragraph (d)(1) of this section to demonstrate that the percent VHAP content does not exceed 10 percent by weight, provided that the engineering judgment demonstrates that the VHAP content clearly does not exceed 10 percent by weight. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in VHAP service, however, the procedures in paragraph (d)(1) of this section shall be used to resolve the disagreement.

(ii) If an owner or operator determines that a piece of equipment is in VHAP service, the determination can be revised only after following the procedures in paragraph (d)(1) of this section.

(3) Samples used in determining the percent VHAP content shall be representative of the process fluid that is contained in or contacts the equipment or the gas being combusted in the flare.

(e)(1) Reference Method 22 shall be used to determine compliance of flares with the visible emission provisions of this subpart.

(2) The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(3) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\left(\sum_{i=1}^{n} C_i H_i\right)$$

Where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20°C.

K = Constant, 1.740×10^{7} (1/ppm) (g mole/scm) (MJ/kcal) where standard temperature for (g mole/scm) is 20°C

C_i = Concentration of sample component i in ppm, as measured by Reference Method 18 of Appendix A of 40 FR Part 60 and ASTM D2504–67 (reapproved 1977) (incorporated by reference as specified in § 61.18).

H_i = Net heat of combustion of sample component i, kcal/g mole. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 61.18) if published values are not available or cannot be calculated.

(4) The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by Reference Method 2, 2A, 2C, or 2D, as appropriate, by the unobstructed (free) cross section area of the flare tip.

(5) The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$VMax = 8.76 + 0.7084(H_T)$

Where:

VMax = Maximum permitted velocity, m/sec

8.706 = Constant.

0.7084 = Constant.

H_T = The net heating value as determined in paragraph (e)(3) of this section.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

§ 61.246 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one process unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these process units in one recordkeeping system if the system identifies each record by each process unit.

(b) When each leak is detected as specified in §§ 61.242–2, 61.242–3, 61.242–7, and 61.242–8, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(2) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in § 61.242–7(c) and no leak has been detected during those 2 months.

(3) The identification on equipment, except on a valve, may be removed after it has been repaired.

(c) When each leak, is detected as specified in §§ 61.242–2, 61.242–3, 61.242–7, and 61.242–8, the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date the leak was detected and the dates of each attempt to repair the leak.

(3) Repair methods applied in each attempt to repair the leak.

(4) "Above 10,000" if the maximum instrument reading measured by the methods specified in § 61.245(a) after each repair attempt is equal to or greater than 10,000 ppm.

(5) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(6) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process shutdown.

(7) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(8) Dates of process unit shutdowns that occur while the equipment is unrepaired.

(9) The date of successful repair of the leak.

(d) The following information pertaining to the design requirements for closed-vent systems and control devices described in § 61.242–11 shall be

recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(3) A description of the parameter or parameters monitored, as required in § 61.242–11(e), to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(4) Periods when the closed-vent systems and control devices required in §§ 61.242–2, 61.242–3, 61.242–4, 61.242–5 and 61.242–9 are not operated as designed, including periods when a flare pilot light does not have a flame.

(5) Dates of startups and shutdowns of the closed-vent systems and control devices required in §§ 61.242–2, 61.242–3, 61.242–4, 61.242–5 and 61.242–9.

(e) The following information pertaining to all equipment subject to the requirements in § 61.242–1 to § 61.242–11 shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for equipment subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 61.242–2(e), 61.242–3(i), and 61.242–7(f).

(ii) The designation of this equipment as subject to the requirements of § 61.242–2(e), 61.242–3(i), or 61.242–7(f) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § 61.242–4(a).

(4)(i) The dates of each compliance test required in §§ 61.242–2(e), 61.242–3(i), 61.242–4, and 61.242–7(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(f) The following information pertaining to all valves subject to the requirements of § 61.242–7(g) and (h) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(g) The following information shall be recorded for valves complying with § 61.243–2:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(h) The following information shall be recorded in a log that is kept in a readily accessible location:

(1) Design criterion required in § 61.242–2(d)(5) and § 61.242–3(e)(2) and an explanation of the design criterion; and

(2) Any changes to this criterion and the reasons for the changes.

(i) The following information shall be recorded in a log that is kept in a readily accessible location for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

(1) An analysis demonstrating the design capacity of the process unit, and

(2) An analysis demonstrating that equipment is not in VHAP service.

(j) Information and data used to demonstrate that a piece of equipment is not in VHAP service shall be recorded in a log that is kept in a readily accessible location.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

(Approved by the Office of Management and Budget under control number 2060–0068)

§ 61.247 Reporting requirements.

(a)(1) An owner or operator of any piece of equipment to which this subpart applies shall submit a statement in writing notifying the Administrator that the requirements of §§ 61.242, 61.245, 61.246, and 61.247 are being implemented.

(2) In the case of an existing source or a new source which has an initial startup date preceding the effective date, the statement is to be submitted within 90 days of the effective date, unless a waiver of compliance is granted under § 61.11, along with the information required under § 61.10. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of new sources which did not have an initial startup date preceding the effective date, the statement shall be submitted with the application for approval of construction, as described in § 61.07.

(4) The statement is to contain the following information for each source:

(i) Equipment identification number and process unit identification.

(ii) Type of equipment (for example, a pump or pipeline valve).

(iii) Percent by weight VHAP in the fluid at the equipment.

(iv) Process fluid state at the equipment (gas/vapor or liquid).

(v) Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) A report shall be submitted to the Administrator semiannually starting 6 months after the initial report required in § 61.247(a), that includes the following information:

(1) Process unit identification.

(2) For each month during the semiannual reporting period,

(i) Number of valves for which leaks were detected as described in § 61.242–7(b) of § 61.243–2.

(ii) Number of valves for which leaks were not repaired as required in § 61.242–7(d).

(iii) Number of pumps for which leaks were detected as described in § 61.242–2(b) and (d)(6).

(iv) Number of pumps for which leaks were not repaired as required in § 61.242–2(c) and (d)(6).

(v) Number of compressors for which leaks were detected as described in § 61.242–3(f).

(vi) Number of compressors for which leaks were not repaired as required in § 61.242–3(g).

(vii) The facts that explain any delay of repairs and, where appropriate, why a process unit shutdown was technically infeasible.

(3) Dates of process unit shutdowns which occurred within the semiannual reporting period.

(4) Revisions to items reported according to paragraph (a) if changes have occurred since the initial report or subsequent revisions to the initial report.

(5) The results of all performance tests to determine compliance with § 61.242–2(e), § 61.242–3(i), § 61.242–4(a), § 61.242–7(f), § 61.242–11(f), § 61.243–1 and § 61.243–2 conducted within the semiannual reporting period.

(c) In the first report submitted as required in § 61.247(a), the report shall include a reporting schedule stating the months that semiannual reports shall be submitted. Subsequent reports shall be submitted according to that schedule, unless a revised schedule has been submitted in a previous semiannual report.

(d) An owner or operator electing to comply with the provisions of §§ 61.243–1 and 61.243–2 shall notify the Administrator of the alternative standard selected 90 days before implementing either of the provisions.

(e) An application for approval of construction or modification, § 61.05(a) and § 61.07, will not be required if—

(1) The new source complies with the standard, § 61.242;

(2) The new source is not part of the construction of a process unit; and

(3) In the next semiannual report required by § 61.247(b), the information in § 61.247(a)(4) is reported.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).) (Approved by the Office of Management and Budget under control number ICR–1153.)

2. By adding paragraphs (a) (4), (5), and (6) to § 61.18 of Subpart A—General Provisions as follows. The introductory text of the section and of paragraph (a) are shown for reader convenience.

§ 61.18 Incorporation by reference.

The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any changes in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, N.W., Washington, D.C. 20408 and the Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina 27711.

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or the University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

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(4) ASTM D 2267–68 (Reapproved 1978), Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography, IBR approved June 6, 1984, for § 61.245(d)(1).

(5) ASTM D 2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved June 6, 1984, for § 61.245(e)(3).

(6) ASTM D 2504–67 (Reapproved 1977), Noncondensable Gases in C_3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved June 6, 1984, for § 61.245(e)(3).

(Sections 112 and 301(a) of the Clean Air Act, as amended, [42 U.S.C. 7412, 7601(a)])

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Part IV

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Benzene Emissions From Coke By-Product Recovery Plants; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2538-3]

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Benzene Emissions From Coke By-Product Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The proposed standard would limit benzene emissions from new and existing sources in coke by-product recovery plants. The proposed standard implements section 112 of the Clean Air Act and is based on the Administrator's determination of June 8, 1977 (42 FR 29332) that benzene is a hazardous air pollutant. The intent of the standard is to protect the public health with an ample margin of safety.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standard for coke by-product recovery plants.

DATES: *Comments.* Comments must be received on or before August 21, 1984.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 27, 1984, a public hearing will be held on July 25, 1984, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur.

Requests to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 27, 1984.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–79–16, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, the public hearing will be held at the Office of Administration Auditorium, Research Triangle Park, N.C. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur.

Persons wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Background Information Document. The background information document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Benzene Emissions from Coke By-Product Recovery Plants—Background Information for Proposed Standards" (EPA–450/3–83–016a).

Docket. Docket A–79–16, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. James U. Crowder, (919) 541–5601, concerning technical aspects of the industry and control technologies, and Mr. Gilbert H. Wood, (919) 541–5578, concerning regulatory decisions and the standard. The address for both parties is Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Introduction

Benzene was listed as a hazardous air pollutant under section 112 of the Clean Air Act on June 8, 1977 (42 FR 29332). Section 112 defines a "hazardous air pollutant" as one which, in the judgment of the Administrator, "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness." In EPA's judgment, benzene emissions from coke by-product recovery plants pose significant health risks to exposed populations and warrant Federal regulatory action under section 112.

Coke by-product recovery plants are currently largely uncontrolled, and use of the technology selected as the basis for the proposed standards would substantially reduce benzene emissions and associated health risks. The level of control selected as the basis for the proposed standards would result in fuel savings and increased produce recovery. As a result, the net nationwide annualized cost of the proposed standards would actually be a savings. [In general, even though the purchase of air pollution control equipment may result in a net savings, affected sources do not necessarily purchase that equipment voluntarily because they may be able to attain a higher rate of return on their investment if given the opportunity to invest elsewhere.]

This preamble first summarizes the proposed standard for coke by-product recovery plants and the impacts of the standard. It then explains the rationale for each of the decisions made in selecting the proposed standard. These decisions include the selection of the source category, the selection of emission points, the selection of the level of the standard, the selection of the format of the standard, and the selection of the specific requirements themselves. Administrative considerations, including Executive Order 12291 and the Regulatory Flexibility Act, are discussed at the end of the preamble.

Summary of Proposed Standards

The proposed standard would reduce benzene emissions from several emission sources at each coke by-product recovery plant through a combination of emission standards, equipment, work practice, and operational requirements, depending on the source to be controlled. Both new and existing sources would be subject to the provisions of the proposed standard. Alternative standards are also proposed for several emission sources, as are procedures for permitting the use of alternative means of emission limitation under section 112(e)(3) of the Act.

An equipment standard is proposed for the control of emissions from each tar decanter, tar intercepting sump, flushing-liquor circulation tank, tar storage tank, tar dewatering tank, light oil condenser, light-oil decanter, wash-oil decanter, and wash-oil circulation tank. The proposed standard would require that each affected source be totally enclosed with emissions ducted to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process. Unless otherwise specified, pressure relief devices, vacuum relief devices, access hatches, and sampling ports would be the only openings allowed on each source. The proposed standard would require that each access hatch and sampling port be equipped with a gasket and a cover or lid that is kept in a closed position when not in actual use.

This proposed equipment standard could be achieved with the use of a gas blanketing system. A gas blanketing system is a closed system operated at positive pressure and is generally

composed of piping, connections, and flow-inducing devices (if necessary) that transport emissions from the enclosed source back to the coke-oven battery gas holder, the collecting main, or another point in the by-product recovery process. Depending on the source to be controlled, dirty or clean coke-oven gas, nitrogen, or natural gas can be used as the gas blanket.

To ensure that the control equipment for each source is being properly operated and maintained, the proposed standard would require a semiannual inspection of the connections and seals on each gas blanketing system for leaks, using EPA Reference Method 21 (40 CFR Part 60, Appendix A). An organic chemical concentration of more than 500 ppm by volume above a background concentration would indicate the presence of a leak. The proposed standard would also require a semiannual visual inspection of each source and the piping of the control system for visible defects such as gaps or tears. The proposed standard would require that a first attempt at repair of each leak or visible defect be made within 5 days of detection, with repair within 15 days. The owner or operator would be required to record the results of the inspections for each source, and include the results in a semiannual report.

Proper maintenance of the system will help ensure the proper operation of the system. To this end, the proposed regulation would require an annual maintenance inspection for abnormalities such as pluggages, sticking valves, and clogged or improperly operating condensate traps. A first attempt at repair must be made within 5 days, with any necessary repairs made within 15 days of the inspection. If a system blockage occurs, the proposed regulation would require the owner or operator to conduct an inspection and make any necessary repairs immediately upon detection. The proposed standard would require that information regarding the annual inspection or repairs made to correct a system blockage also be included in the semiannual report.

The proposed standard would require the use of a control device designed and operated to achieve a 90-percent benzene emission reduction for storage tanks containing light oil (including benzene-toluene-xylene mixtures), refined benzene, or excess ammonia-liquor. This proposed design standard can be achieved with the use of a wash-oil scrubber, a gas blanketing system, or any other control system that is designed and operated to achieve at least a 90-percent emission reduction.

The proposed regulation also would require that each affected storage tank be totally enclosed and sealed with emissions vented to the wash-oil scrubber (or other control device or system providing an equivalent emission reduction). Pressure relief devices, vacuum relief devices, access hatches, and sampling ports would be the only openings allowed on each tank. Each access hatch and sampling port must be equipped with a gasket and a cover or lid that is kept in a closed position when not in actual use. The semiannual inspection and repair of leaks in the seals and ductwork, and the annual maintenance inspection and repair program (including recordkeeping and reporting requirements) proposed for gas blanketed sources also would apply to these tanks and the vents to the control device. Monitoring of parameters related to the operation of the control device (such as wash-oil pressure and flowrate, and exit gas temperature for the wash-oil scrubber) also are included to ensure the proper operation and maintenance of any control device used to achieve compliance.

An equipment standard is proposed for the control of benzene emissions from each light-oil sump. The proposed standard requires that the surface area of each light-oil sump be completely enclosed so as to provide a closed system for the containment of emissions. This standard can be achieved with the installation of a tightly fitting permanent or removable cover, coupled with the use of a gasket material applied to the rim of the sump cover. The proposed standard would allow the use of an access hatch and a vent in the sump cover. However, any access hatch must be equipped with a gasket and cover or lid, and any vent must be equipped with a water leg seal, pressure relief device, or vacuum relief device. The proposed standard would also require the semiannual inspection of the seals for leaks. An organic chemical concentration of over 500 ppm, as measured by Reference Method 21, would indicate the presence of a leak. A first attempt at repair of any leak or visible defect would be required within 5 days of detection, with repair within 15 days. The results of the inspection would be reported semiannually. The proposed standard would not allow venting of steam or gases from other points in the coke by-product process to the light-oil sump.

The proposed standard would allow no emissions from the processing of naphthalene separated from the water of a direct-water final cooler. This emission limit could be achieved by a process modification involving the absorption of naphthalene in tar, wash oil, or an alternative medium (other than water). For example, a mixer-settler could be added to the direct-water final cooler, or the direct-water final cooler could be replaced by a tar-bottom or wash-oil final cooler system. If a mixer/settler were used to remove napthalene from the final cooler aqueous effluent, the proposed standard would require that the mixer-settler be totally enclosed with emissions ducted to the gas collection system, gas distribution system or other enclosed point in the by-product recovery process. This requirement could be achieved by controlling emissions from the mixer settler with a gas blanketing system. Unless otherwise specified, pressure relief devices, vacuum relief devices, access hatches, and sampling ports would be the only openings allowed on the mixer settler. Again, the proposed standard would require that each access hatch and sampling port be equipped with a gasket and a cover or lid that is kept in a closed position when not in actual use.

The proposed standard would also apply to leaks (i.e., fugitive emissions) from new and existing pieces of equipment in benzene service, including pumps, valves, exhausters, pressure relief devices, sampling connections, and open-ended lines. Pumps, valves, pressure relief devices, sampling connections, and open-ended lines in benzene service are those components that contact or contain materials having a benzene concentration of at least 10 percent by weight. Exhausters that contact or contain materials having a benzene concentration of at least 1 percent benzene by weight are also in benzene service.

The proposed standard would require that all pumps in benzene service be monitored monthly for the detection of vapor leaks. A weekly visual inspection for liquid leaks would also be required. The proposed standard would require that any pump with an organic chemical concentration at or above 10,000 ppm, as measured by Reference Method 21, be repaired with 15 days after detection of a leak, except when repair would require a process unit shutdown. An initial attempt to repair such a leak would have to be made within 5 days after the leak was detected. "Repair" means that the measured concentration is below 10,000 ppm.

Quarterly monitoring for leaks from each exhauster in benzene service also would be required. If an organic

chemical concentration at or above 10,000 ppm were detected, as measured by Reference Method 21, the proposed standard would require a first attempt at repair within 5 days, with repair of the leak within 15 days from the date the leak was detected.

The proposed standard provides three types of alternatives to the leak detection and repair requirements for pumps and exhausters. An owner or operator may use 'leakless" equipment such as magnetically coupled or diaphragm pumps to achieve a "no detectable emissions" limit (i.e., 500 ppm above a background concentration, as measured by Reference Method 21). However, an annual performance test using instrument monitoring would be required to verify the "no detectable emissions" status of each pump and exhauster. Or, pumps and exhausters can be equipped with enclosed seal areas vented to a control device designed and operated to achieve a 95-percent benzene control efficiency.

A third alternative would exempt pumps equipped with dual mechanical seals with a barrier fluid between the two seals and exhausters equipped with seals with a barrier fluid system from the leak detection and repair requirements, except for the weekly visual inspection for liquid leaks from pumps. However, emissions from the barrier fluid reservior must be vented to a control device designed and operated to achieve a 95-percent benzene control efficiency, the barrier fluid must be purged and added to the process stream, or the pressure of the barrier fluid must be maintained at a level above the pressure in the pump or exhauster stuffing box. A pressure or level indicator to detect any failure of the seal system or the barrier fluid system would be required, with the indicator checked daily or equipped with an alarm to signal failure of the system.

Under the proposed standard, valves in benzene service would be subject to requirements similar to those for pumps in benzene service. All valves in benzene service would be monitored monthly for the detection of leaks. If an organic chemical concentration at or above 10,000 ppm is detected, as measured by Reference Method 21, the proposed standard would require that the valve be repaired within 15 days. Again, a first attempt to repair the valve so that the measured concentration is below 10,000 ppm would be required within 5 days after the leak was detected. However, those valves that are found not to be leaking for 2 successive months could be monitored at quarterly intervals until a leak is detected, at which time monthly monitoring would again be required.

The proposed standard would also provide alternatives to the required leak detection and repair programs for valves in benzene service. First, the owner or operator could elect to meet a performance level where less than 2 percent of all valves could be found leaking. Second, the owner or operator could follow a skip-period leak detection and repair program also based on a performance level of 2 percent. And finally, an owner or operator may use "leakless" valves such as sealed-bellows valves, for which monitoring would not be required. The proposed standard require that these "leakless" valves achieve a "no detectable emission" limit (i.e., 500 ppm above a background concentration, as measured by Reference Method 21). A performance test would also be required on an annual basis to verify the "no detectable emissions" status of each valve.

The proposed standard would also specify a "no detectable emissions" limit (i.e., less than 500 ppm above a background concentration, as measured by Reference Method 21), for pressure relief devices in benzene service. This emission limit could be achieved by equipping pressure relief devices with a rupture disc. The proposed emission limit would not apply to discharges during overpressure releases; however, the proposed standard would require that emissions from each pressure relief device be returned to a state of "no detectable emissions" (500 ppm or less) within 5 days after a discharge. Alternatively, an owner or operator could elect to vent emissions through a closed system to a control device designed and operated to achieve a 95-percent benzene control efficiency or greater, such as a flare.

Closed-purge sampling would be required by the proposed standard. The standard would require that material purged from sampling connections be returned to the process or collected in a closed disposal system. In-situ sampling would be exempted from the closed purge sampling requirements. The proposed standard would also require open-ended lines to be sealed with a cap, blind flange, plug, or second valve. An operational standard for open-ended lines would also require that the cap or other device be removed or opened only when the open-ended line is placed into service.

The proposed standard would also apply to pressure relief devices in liquid service, flanges, and other connectors. The proposed standard would not require a formal leak detection and repair program. However, instrument monitoring must be performed within 5 days if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. If an instrument reading of 10,000 ppm is measured by Reference Method 21, the proposed standard would require a first attempt at repair within 5 days, with repair of the leak within 15 days from the date the leak was detected.

Compliance with the proposed standards would be assessed through plant inspection and the review of records and reports that would document implementation of the requirements. On a semiannual basis, the owner or operator would report the number of leaks detected and the number of leaks not repaired during the 6-month period. Also, if any add-on control devices were used, the owner or operator would report semiannually any occurrences when parameters monitored exceed or drop below the design specifications. The owner or operator would also submit a signed statement in each semiannual report, indicating whether provisions of the standard had been met for the 6-month period. Recordkeeping and reporting requirements for alternative standards are also included in the proposed regulation.

Under the proposed standard, compliance would be required within 90 days of the effective date for existing sources and at startup for a new source. A waiver of compliance for an existing source could be approved by the Administrator for no more than 2 years from the date of promulgation under 40 CFR Part 61. Emission testing would be required only for equipment subject to the no detectable emissions standards or the alternative performance standard for valves. However, the proposed standard would require the following information for each plant to be included in the source report required by § 61.10 of the General Provisions: (1) A description of the control equipment used to achieve compliance for each source; and (2) the date of installation of the control equipment for each source, as certified by the owner or operator.

Summary of Environmental, Health, Energy, and Economic Impacts

The estimated environmental, health, energy, and economic impacts of the proposed standard were based initially on a data base composed of 55 coke by-product recovery plants. Information received recently from the industry and the U.S. Department of Energy indicate that 13 of these plants have closed

permanently during the past 2 years. Consequently, the impacts have been revised to reflect these closures. This preamble presents the revised impacts based on 42 plants. The impacts and associated calculations in the BID will be revised following proposal of the recommended standards.

Implementation of the proposed standard would reduce nationwide benzene emissions from the 42 operating coke by-product recovery plants from their current level of about 24,100 Mg/yr to about 2,700 Mg/yr, an 89-percent reduction. Total uncontrolled nationwide emissions of benzene and other volatile organic compounds also would be reduced from their current estimated level of 160,000 Mg/yr to about 35,000 Mg/yr, a 78-percent reduction.

As a result of this benzene emission reduction, the proposed standard would reduce the estimated maximum lifetime risk for the most exposed population from about 6.4×10^{-3} at current controls to about 3.0×10^{-4}. The reduction also would decrease the estimated annual leukemia incidence from about 2.2 cases per year at current controls to about 0.19 case per year. Due to the assumptions that were made in calculating the maximum lifetime risk and leukemia incidence numbers, there is uncertainty associated with the risk and incidence numbers presented here and elsewhere in this preamble. Although EPA acknowledges this uncertainty, the Agency believes that these estimates represent plausible, if not conservative, approximations of the potential cancer risks. The major uncertainties and assumptions in the estimation of health risks as well as alternative methods of presenting risk information are further described in a following section entitled, "Quantitative Health Risk Assessment."

Implementation of the proposed standards is not expected to result in any unreasonably adverse water pollution, solid waste, noise, or energy impacts. Actually, a slight net reduction of the benzene contained in process wastewater could be expected with the use of the gas blanketing system. A nominal increase in electrical energy or steam requirements could occur if gas blanketing piping were heated to prevent vapors from condensing or freezing in vent lines. However, the cost of this energy requirement would be largely offset by the recovery of benzene contained in the coke oven gases, which otherwise would have been discharged to the atmosphere.

The control required by the proposed standard would result in fuel savings and increased product recovery. As a result, the net nationwide annualized cost of the standard would actually be a savings. The national capital cost associated with the proposed standards is estimated at about $23.8 million over baseline costs (1982 dollars). A savings in nationwide annualized costs would be achieved by the proposed standard as a result of light-oil recovery credits. [In general, even though the purchase of air pollution control equipment may result in a net savings, affected sources do not necessarily purchase that equipment voluntarily because they may be able to attain a higher rate of return if given the opportunity to invest elsewhere.] The price of foundry coke could increase by as much as $0.24/Mg, an increase of less than 1 percent from the baseline price, while the price of furnace coke would increase by less than $0.02/Mg (1982 dollars) as a result of the proposed standard. An economic analysis indicates that the industry trend is to pass through some increases in costs to consumers.

Background Information on Health Effects of Benzene

On June 8, 1977, the Administrator announced his decision to list benzene as a hazardous air pollutant under section 112 of the Clean Air Act (42 FR 29332). A public hearing was held on August 21, 1980, to discuss the listing. Supplementary background information regarding the listing may be obtained from the maleic anhydride Docket Number OAQPS 79-3, Part I, and from the EPA document, "Response to Public Comments on EPA's Listing of Benzene Under Section 112" (EPA-450/5-82-003).

Quantitative Health Risk Assessment

The listing of benzene as a hazardous air pollutant under section 112 requires that EPA publish emission standards which provide an "ample margin of safety" to protect the public health. However, neither the language nor the legislative history of section 112 reveals any specific Congressional intent as to how to apply the phrase "ample margin of safety" to protect the public health from pollutants like benzene.

In some cases, scientific evidence indicates that a given chemical is hazardous at high levels of exposure but has not effect below a certain level. However, for most carcinogenic chemicals, including benzene, thresholds below which there is no cancer risk have not been established. There is some reason to believe that such thresholds may not exist for many carcinogens. For such substances, EPA and other Federal agencies have taken the position that any level of exposure may pose some risk of adverse effects, with the risk increasing as the exposure increases.

Since a specific environmental carcinogen is likely to be responsible for at most a small fraction of a community's overall cancer incidence and since the general population is exposed to a complex mix of potentially toxic agents, it is virtually impossible with current scientific techniques to directly link actual human cancers with ambient air exposure to chemicals such as benzene. Consequently, EPA relies on mathematical modeling techniques to estimate human health risks. These techniques—"quantitative risk assessment"— are used to assess the risk of adverse health effects from exposure to benzene in the ambient environment by mathematically extrapolating effects found at the higher occupational exposure levels to the lower concentration levels characteristic of human exposure in the vicinity of industrial sources of benzene.

EPA's approach to risk assessment for suspected carcinogens may be divided into several steps. The first is a qualitative evaluation of the evidence to determine whether a substance should be considered a human carcinogen for regulatory purposes. As described earlier, this was done in the case of benzene before the chemical was listed as a hazardous air pollutant in 1977. The next stage is quantitative: how large is the risk of cancer at various levels of exposure? The result of this examination is a dose-response relationship from which a "unit risk factor" is derived. The unit risk factor represents the cancer risk for an individual exposed to a unit concentration (e.g., 1 $\mu g/m^3$) for a lifetime.

The third stage of the risk assessment is to estimate how many people are exposed to the substance, and at what levels. Exposure estimates are combined with the unit risk factor to obtain estimates of the risk posed by air emissions of the pollutant, in this case benzene.

The estimated carcinogenic risks posed by benzene emissions are characterized by two ways: As the predicted annual incidence of leukemia (expressed as cases per year), and as the lifetime risk of leukemia for individuals exposed to the highest predicted annual average ambient benzene concentrations (expressed as a probability). "Annual incidence" represents the aggregate risk for the population residing within a specified distance of emitting sources. "Maximum lifetime risk" represents the probability of contracting leukemia for those individuals assumed to be exposed for a

lifetime to the highest average benzene concentrations predicted to occur in the ambient air in the vicinity of emitting sources.

The health risk estimated for benzene source categories are comprised of three components noted above: the unit risk factor,* based on a dose-response function derived from epidemiological data; the exposed population, estimated from census data; and the benzene ambient concentrations, derived from dispersion modeling of emissions.

EPA has extrapolated the leukemia risks identified for occupationally exposed populations (generally healthy, white males) to the general population for whom susceptibility to a carcinogenic insult could differ. The presence of more or less susceptible subgroups within the general population would result in an occupationally-derived risk factor that may underestimate or overestimate actual risks. To the extent that there are more susceptible subgroups within the general population, the maximum individual lifetime risks may be underestimated.

On the other hand, general population exposures to benzene are much lower than those experienced by the exposed workers in the occupational studies, often by several orders of magnitude. In relating the occupational experience to the general population, EPA has applied a linear, non-threshold model that assumes that the leukemia response is linearly related to benzene dose, even at very low levels of exposure. There are biological data supporting this approach, particularly for carcinogens. However, there are also data which suggest that, for some toxic chemicals, dose/response curves are not linear, with response decreasing faster than dose at low levels of exposure. At such levels, the nonlinear models tend to produce smaller risk factors than the linear model. The data for benzene do not conclusively support either hypothesis. EPA has elected to use the linear model for benzene because this model is generally considered to be conservative compared to the non-linear alternatives. This choice may result in an overestimate of the actual leukemia risks.

EPA estimates ambient benzene concentrations in the vicinity of emitting sources through the use of atmospheric dispersion models. EPA believes that its ambient dispersion modeling provides a reasonable estimate of the maximum ambient levels of benzene to which the public could be exposed. The models accept emission estimates, plant parameters, and meteorology as inputs and predict ambient concentrations at specified locations, conditional upon certain assumptions. For exemple, emissions and plant parameters often must be estimated rather than measure, particularly in determining the magnitude of fugitive emissions and where there are large numbers of sources. This can lead to overestimates or underestimates of exposure. Similarly, meteorological data often are not available at the plant site but only from distant weather stations that may not be representative of the meteorology of the plant vicinity.

EPA's dispersion models normally assume that the terrain in the vicinity of the sources is flat. For sources located in complex terrain, this assumption would tend to underestimate the maximum annual concentration although estimates of aggregate population exposure would be less affected.

On the other hand, maximum individual lifetime risk estimates are based on two important exposure assumptions that may overestimate the risk for people living around a source emitting benzene. The first assumption is that the dose to the most exposed individual is equal to the predicted outdoor ambient concentration; the second assumption is that the exposed individual stays in the same place for 70 years and is continuously exposed. Implicit in the second assumption is the notion that the source emits at the same level for these 70 years.

We recognize that these assumptions are simplifications. People rarely live in the same place for 70 years; some move out and some move in. Nor do plants operate continuously for 70 years using the same equipment.

The estimation of risk for partial lifetime exposure can, as a first approximation, be assumed to be proportional to the fraction of a lifetime that a person has been exposed to pollution from the particular source. For example, the risk for 1 year can be approximated as $\frac{1}{70}$ of the lifetime risk; the risk for 7 years of exposure might be $\frac{7}{70}$ of the lifetime risk. Similarly, if the lifetime risk from a benzene source is 1 in 1,000, someone with a 7-year exposure would be able to roughly estimate his risk from a source as about 1 in 10,000.

It must be recognized, however, that this is an approximation, because the risk for some pollutants may be higher or lower when people are exposed at different times in their lives, since the risk of developing certain cancers may be partly related to the age at which a person is exposed to a carcinogen. In addition, it is worth noting that this age sensitivity may be different for different chemicals. At this time, we have no information as to whether this is true for benzene.

The assumptions necessary to estimate benzene health risks and the underlying uncertainties have led some commenters on EPA's proposed rules to suggest that the risk estimates are inappropriate for use in regulatory decision making. Although EPA acknowledges the potential for error in such estimates, the Agency has concluded that both the unit risk factor for benzene and the evaluation of public exposure represent plausible, if conservative, estimates of acutal conditions. Combining these quantities to produce estimates of the leukemia risks to exposed populations implies that the risk estimates obtained are also conservative in nature: that is, the actual leukemia risks from benzene exposure are not likely to be higher than those estimated. In this context, EPA believes that such estimates of the health hazard can and should play an important role in the regulation of hazardous pollutants.

EPA has received numerous public comments on most of the steps in the analytic process described above as a result of the announcement of the listing of benzene as a hazardous air pollutant and the intent to regulate a number of source categories. The full response to those comments is in the EPA document, "Response to Public Comments on EPA's Listing of Benzene Under Section 112" (EPA–450/5–82–003). EPA is presently inclined to continue to use the major features of the risk-assessment process described above, and in particular to adhere to the no-threshold assumption and the linear model.

Arguments have been advanced that, in addition to the conservative nature of the model used, the assumptions made by EPA (Carcinogen Assessment Group [CAG]) in the derivation of a unit leukemia risk factor for benzene represented "serious misinterpretation" of the underlying epidemiological evidence. Among the specific criticisms are: CAG (1) inappropriately included in its evaluation of the Infante et al. study two cases of leukemia from outside the cohort, inappropriately excluded a population of workers that had been exposed to benzene, and improperly assumed that exposure levels were comparable with prevailing

*For benzene, the unit risk factor constitutes a point estimate of the human leukemia risk, expressed as the geometric mean of the risk factors derived from three epidemiological studies. Where animal data form the basis for the derivation of a risk factor, EPA may apply statistical tests (e.g., 95 percent confidence limits) to the resulting factor to obtain a "plausible upper bound" estimate of the unit risk

occupational standards; (2) accepted, in the Aksoy et al. studies, an unreasonable undercount of the background leukemia incidence in rural Turkey, made a false adjustment of age, and under-estimated the exposure duration; and (3) included the Ott et al. study in the analysis despite a lack of statistical significance.

EPA has reexamined and reevaluated each of the three studies. In summary, EPA concluded that one case of leukemia was inappropriately included from the Infante et al. study in computing the original unit risk factor. Additionally, EPA reaffirmed its decision to exclude dry-side workers from that study in developing the risk factor. The Agency agrees that the Aksoy et al. study was adjusted improperly for age; however, the exposures and durations of exposures are still considered reasonable estimates. The Ott et al. study was not eliminated from the risk assessment because the findings meet the test of statistical significance and because it provides the best documented exposure data available from the three epidemiological studies.

Based on these findings, the unit risk factor (the probability of an individual contracting leukemia after a lifetime of exposure to a benzene concentration of one part benzene per million parts air) was recalculated. The revised estimate resulted in a reduction of about 7 percent from the original estimate of the geometric mean, from a probability of leukemia of 0.024/ppm to a probability of leukemia of 0.022/ppm.

Selection of Coke By-Product Recovery Plants for Regulation

Nationwide benzene emissions from sources considered for regulation at coke by-product recovery plants are estimated at 24,100 Mg/yr. Dispersion modeling was used to estimate the benzene concentrations to which people within 20 kilometers of coke by-product plants are exposed as a result of the benzene emissions from these plants. Several million people (at least 15 to 20 million) live within 20 kilometers of the 42 existing by-product recovery plants. As a result of exposure to these benzene concentrations, the maximum lifetime risk of the most exposed population is estimated at 6.4×10^{-3}. The maximum lifetime risk is the estimated probability that the people who are exposed continuously for 70 years to the highest maximum annual average ambient benzene concentration estimated to result from benzene emissions from coke by-product recovery plants will contract leukemia as a result of exposure to these emissions. In addition, the leukemia incidence is estimated at 2.2 cases per year within this population as a result of exposure to benzene emissions from these plants.

Although the maximum lifetime risk estimates apply to only a few people under particular conditions, EPA has calculated the lifetime risk for all individuals living within 20 kilometers of coke by-product recovery plants. The following table (Table 1) presents EPA's estimate of the distribution of people at different predicted risk levels living around these sources. For each risk range in the first column, the second column indicates the number of people living within the 20 kilometer (12.5 miles) radius estimated to be exposed to benzene at levels that would produce those risks.

TABLE 1. POPULATIONS AT RISK

Risk (Probability) of Leukemia from Lifetime (70 years) Exposure	Number of People Exposed Within 20 km (12.5 miles) of Sources[a]
Greater than 1×10^{-2} (Greater than 1 in 100)	0
1×10^{-2} - 1×10^{-3} (1 in 100 to 1 in 1,000)	3,200
1×10^{-3} - 1×10^{-4} (1 in 1,000 to 1 in 10,000)	101,000
1×10^{-4} - 1×10^{-5} (1 in 10,000 to 1 in 100,000)	2,212,000
1×10^{-5} - 1×10^{-6} (1 in 100,000 to 1 in 1,000,000)	17,991,000
1×10^{-6} - 1×10^{-7} (1 in 1,000,000 to 1 in 10,000,000)	10,214,000
1×10^{-7} - 1×10^{-8} (1 in 10,000,000 to 1 in 100,000,000)	442,000

[a] The values for the number of people were calculated on a plant-by-plant basis and summed. Because some people are located within 20 km of more than one plant, the actual number of people exposed will be somewhat less than presented in this table.

Controls are available for reducing the benzene emissions at these plants (see section entitled, "Selection of Control Technologies"). The application of these controls also would reduce uncontrolled emissions of volatile organic compounds and potentially toxic pollutants other than benzene.

Based on the documented evidence that benzene is a leukemogen, the magnitude of benzene emissions from coke by-product recovery plants, the estimated ambient concentrations due to these emissions, the resulting estimated maximum individual risks and estimated incidence of leukemia in the exposed population, the potential reductions in these health risks achievable through available control techniques, and consideration of the uncertainties assocated with these quantitative risk estimates, the Administrator finds that benzene emissions from coke by-product recovery plants pose a significant risk of cancer and warrent Federal regulation under section 112.

Selection of Emission Points

Numerous benzene emission sources are present at each coke by-product plant. During 1979 and 1980, a survey of seven representative coke by-product plants was conducted to identify the sources that emit benzene and for which controls were protentially available. Visual observations were made and grab samples were obtained during the source sampling survey, which was followed by an emission testing program. Because of the numerous benzene emission sources throughout the plants, engineering judgment (coupled with site-specific production rates and process information provided by the plants), the results of sample analysis, and the results of emission

testing were used to estimate the emissions.

More than 20 emission sources were identified in the source sampling survey. The emission sources considered for regulation are listed in Table 2, as are the estimated uncontrolled industry-wide benzene emissions and the estimated uncontrolled benzene emissions from a medium-sized plant producing 4,000 Mg of coke per day. Further information regarding the development of the emission factors used to estimate uncontrolled emissions is provided in Chapter 3 of the BID. Following is a brief description of typical coke by-producty recovery processes and the associated emission points considered for regulation under the proposed standard.

TABLE 2. UNCONTROLLED BENZENE EMISSIONS FROM COKE BY-PRODUCT RECOVERY PLANT EMISSION SOURCES

Emission source	Uncontrolled industry-wide emissions (Mg/yr)	Emissions from a medium-sized plant[a] (Mg/yr)
Tar decanter	3,560	108
Tar-intercepting sump	4,380	133
Flushing-liquor circulation tank	417	13
Tar dewatering tanks	874	29
Tar storage tanks	556	17
Excess-ammonia liquor storage tanks	417	13
Direct-water final cooler cooling tower	5,500	390[b]
Naphthalene separation and processing	2,180	156[b]
Tar-bottom final cooler cooling tower	696	100[b]
Wash-oil decanter	143	5.5
Wash-oil circulation tank	143	5.5
Light-oil condenser and light-oil decanter vent	3,200	125
Light-oil sump	632	22
Benzene storage tanks	71	8.5[c]
Benzene-mixture (BTX) storage tanks	23	8.5
Light-oil storage tanks	276	9
Pumps	463	16[d]
Valves	312	11[d]
Pressure relief devices	209	7[d]
Exhausters	25	4[d]
Sampling connections	41	1.4[d]
Open-ended lines	14	0.3[d]

[a] Uncontrolled benzene emissions, a medium-sized plant producing 4,000 Mg of coke per day.
[b] An actual plant would have either a direct-water final cooler or a tar-bottom final cooler. Naphthalene processing would be found only at a plant with a direct-water final cooler.
[c] This emission source would only occur at a plant which practices benzene refining.
[d] Uncontrolled emissions estimate for a plant that does not practice benzene refining.

In the coke by-product recovery process, the various components of the gases emitted from the coke oven battery are separated and recovered to obtain products such as crude tar, naphthalene, light oils, benzene-mixtures, and refined benzene. In the crude tar separation operation, the initial condensation of the tar contained in the coke oven gases occurs by direct contact with flushing liquor in the collecting and suction mains. Approximately 80 percent of the tar is separated from the gas in the mains and is flushed to a rar decanter (also known as a flushing liquor decanter). The remaining light tar and condensate (approximately 20 percent) is forwarded to the tar-intercepting sump for the separation or light oils and wastewater. The flushing liquor that separates from the tar in the tar decanter is then transferred to the flushing-liquor circulation tank, which cools the flushing liquor and recirculates it to the gas mains. In many plants, the coal tar is not refined on site but is sold to tar refiners. A common requirement is that the tar contain no more than 2 percent water. For this reasons the water content of the tar may be futher reduced by a tar-dewatering (dehydration) process. The crude tar recovered during the tar separation process is then stored in heated storage tanks pending further use or sale.

Depending on the plant design, tar recovered during the separation process may also undergo refining to produce coal tar pitch. Like other tar products, pitch is stored in vented storage vessels. Benzene emissions from pitch storage tanks were not evident during emission testing because this pollutant is driven off with the lighter fractions. In addition, this process is practiced at few by-product plants. For these reasons, pitch storage tanks and pitch prilling operations (the refining of pitch to produce extruded pencils or beads) were not considered for regulation under the proposed standards.

The ammonia produced in a coke oven is approximately 0.2 percent of the weight of the coal fed to the ovens. Flushing liquor sprayed into the collecting mains absorbs some of the ammonia, and water condensed in the primary cooler absorbs an additional amount. Although aqueous ammonia solutions are decanted from the tar in a variety of processing vessels, the excess ammonia-liquor storage tank was the only benzene emmission source identified in ammonia recovery or ammonia wastewater processing facilities.

Before light oils are recovered from the coke oven gas, the temperature of the gas is cooled from approximately 60° C to about 25° C by a final cooler. As the gas is cooled, some of the water and most of the naphthalene in the gas are condensed into the cooling medium. Both water and naphthalene are removed from the gas to prevent problems downstream. The three types of final coolers currently used by the industry are: (1) Direct-water, (2) tar-bottom, and (3) wash-oil final coolers.

Available data indicate that 19 plants use a direct-water final cooler. When a direct-water final cooler is used. The condensed naphthalene in the final cooler must be periodically removed from the hot well of the final cooler to prevent clogging of tubes, vents, or meters. Benzene emissions result when crude naphthalene is removed from the hot well of the direct-water final cooler and transported in open troughs, refined by melting or steam drying, or stored while it is hot for convenience in handling. After separation of the naphthalene, the water is cooled in an inducted-draft cooling tower and recirculated to the final cooler. The water contains benzene, which is released to the atmosphere when the water is cooled against air in an open

cooling tower. At plants using a direct-water final cooler, the final-cooler cooling tower is usually the largest source of benzene emissions.

An estimated 12 plants use a tar-bottom final cooler. In this system, the cooling medium (water) is passed through a pool of tar in the bottom of the final cooler. Naphthalene in the water dissolves in the tar and the tar is recirculated to tar storage tanks, sold as a final product, or refined. As in a direct-water final cooler, the final cooler water is cooled in a cooling tower and recirculated to the final cooler. Although use of a tar-bottom final cooler eliminates naphthalene processing and the resultant benzene emissions, the tar may become saturated with benzene. Thus, benzene may still be contained in the final cooler water and released when the water is cooled against air in the final-cooler cooling tower.

A wash-oil final cooler uses petroleum wash oil as the cooling medium rather than water or tar. Naphthalene dissolves in the wash oil, which is indirectly cooled with heat exchangers and recirculated to the final cooler. This system is used by four plants. Benzene emissions from naphthalene processing and from the final-cooler cooling tower are virtually eliminated with the use of a wash-oil final cooler system. However, benzene from the wash oil may still be emitted form the wash-oil decanter and the wash-oil circulation tank associated with the wash-oil final-cooler system. Wash-oil decanters and wash-oil circulation tanks may also occur in the light-oil recovery operation.

Light oil is a clear, yellow-brown oil composed primarily of benzene, toluene, xylene, solvent naphtha, and numerous minor constituents that boil between 0°C and 200°C. Light oil is recovered from the coke oven gas in a scrubber in which wash oil absorbs the light oil from the gas. The benzolized wash oil (wash-oil and light-oil mixture) leaving the scrubber is separated by steam stripping, and the wash oil is cooled and recycled to the scrubber. The stripped vapors may be partially condensed in a light-oil condenser, while those that remain noncondensible may be forwarded to a light-oil decanter (rectifier) that separates the recovered light oil into intermediate and secondary fractions. The overhead, consisting of benzene, toluene, and xylene (BTX) is then forwarded to a water-cooled condenser.

Benzene emission sources in the light-oil recovery operation include wash-oil decanters, wash-oil circulation tanks, light-oil condensers, light-oil decanters (or common vents for light-oil condensers and light-oil decanters), storage tanks containing light oil (including BTX) or refined benzene, and light-oil sumps. The wastewater forwarded to the light-oil sump (from which light oil may be recovered by distillation) may also emit benzene, which is entrained or dissolved in the water.

Sources of benzene fugitive emissions at coke by-product recovery plants also include leaking pumps, valves, exhausters pressure relief devices, sampling connections, flanges, and open-ended lines. In the by-product recovery process, benzene is present in numerous process streams and final products. The streams are usually moved throughout the process unit by pumps through pipes, with the volume of flow regulated by values. Exhausters, generally located in the tar separation sector of the plant, serve to move the coke oven gas in the collecting main. Benzene emissions from these sources at coke by-product recovery plants are specifically exempted from proposed EPA benzene fugitive emission standards (46 FR 1165, January 5, 1981).

Selection of Control Technologies

Many options are available for the control of benzene emissions from coke by-product recovery plants. Implementation of any of the control options would also reduce volatile organic compound (VOC) emissions. Control techniques that are effective in reducing or eliminating emissions include source enclosure used in conjunction with a gas blanketing system, source enclosure alone, wash-oil scrubbers, process modifications, leak detection and repair programs, and equipment for certain fugitive emission sources. Further information regarding these and other control techniques is provided in Chapter 4 of the BID.

Gas blanketing. Gas blanketing has been demonstrated at by-product recovery plants as an effective control technique for reducing VOC emissions, such as benzene, from process vessels and product storage tanks. This control technique can be applied to tar decanters, flushing-liquor circulation tanks, tar-intercepting sumps, tar dewatering tanks, light-oil condensers, light-oil decanters (or the common vent for a light-oil condenser and a light-oil decanter), wash-oil decanters, wash-oil circulation tanks, and storage tanks holding tar, excess-ammonia liquor, light oil, benzene mixtures, and refined benzene.

The basic principles of gas blanketing require sealing all the openings on a vessel or tank, supplying a constant pressure gas blanket with coke-oven gas, nitrogen or natural gas, and providing for the recovery or destruction of displaced vapor emissions. Depending on the source to be controlled, displaced vapors from the enclosed source can be transported through a piping system to the collecting main, to the gas holder, or to another point in the by-product recovery process where the benzene will be recovered or destroyed. With source enclosure, the control efficiency of the blanketing system approaches 100 percent. However, deterioration of piping or sealing materials can occasionally result in leaks, thus reducing the overall control efficiency to as low as 98 percent.

With gas blanketing from the collecting main, a vapor recovery system is in place in the form of the by-product recovery process, which removes organics from the raw coke oven gas. One advantage of gas blanketing from the collecting main is the recovery of benzene and other organic material. At a medium-sized by-product plant producing 4,000 Mg of coke per day, benzene losses are estimated as high as 4 percent of the total benzene generated in the process. Depending upon the design of the system and the source to be controlled, much of this estimated process loss can be recovered by venting emissions to the collecting main.

For gas blanketing from the collecting main to work safely and effectively, each emission source must be enclosed to accept a slight, positive pressure without leaks to the atmosphere. For most vessels associated with crude tar produciton, enclosure would require closing atmospheric vent lines and connecting the tank's vent line to the gas blanketing line. However, tar decanters may require further modifications before a gas blanket can be applied. Tar decanter tops usually have a rectangular surface where the liquid is either exposed to the atmosphere or partially covered with concrete slabs set on steel support beams. At many plants, the decanter top must be removed, a water seal and metal cover installed, and gasket material added to provide a tight seal for the metal cover. A water seal suspended from the decanter roof near the sludge discharge chute would allow the major portion of the liquid surface to be blanketed at a small positive pressure, while allowing the remaining portion of the liquid surface (estimated at about 13 percent) to be opened to the atmosphere so as to provide clearance for a sludge conveyor. Because a portion of the liquid surface must remain open to the atmosphere, the benzene control efficiency of gas blanketing for

this source is lower than for other sources, but is estimated to be at least 95 percent.

Potential condensation of naphthalene or other tar components in the piping system and freezing of water vapor in the coke oven gas can be reduced or eliminated by steam tracing the affected line, controlling the temperature with electrical heating tape, or by a combination of both methods. Drip points can also be installed so that any condensate can be drained from the blanketing line. Three-way lubricated plug valves can also be provided to avoid sticking due to tar deposits and to isolate individual vessels during gauging or sampling operations. Although this equipment may not be necessary for each plant and would not be specifically required for any gas blanketing system, equipment costs for these items are included in the estimated system costs described in Chapter 8 of the BID because this equipment is considered a useful and reasonable part of gas blanketing systems.

Gas blanketing from the collecting main has been successfully demonstrated at one by-product plant for the control of emissions from two tar decanters and a flushing liquor circulation tank. At this plant, the gas blanketing line was connected to the offtake main upstream of the Askania regulatory (butterfly control valve). The blanketing pressure was typically controlled at 6 mm of water with a range of 4 to 8 mm of water. The decanter roofs were enclosed up to the sludge conveyor with steel plate and sealed with gasket material. Access hatches on both sources were covered and sealed; a vertical manifold of small valves was also installed to allow the operator to determine the level of tar and flushing liquor in the decanters. Three-way valves, atmospheric vents, and steam-out connectors for line cleaning were also installed. All lines were stream traced and insulated. No safety problems were reported by plant personnel operating the positive pressure portion of the system at this plant.

Engineering analyses indicate that no technical, safety, or operating problem would preclude the use of gas blanketing from the collecting main for the control of tar-intercepting sumps, tar storage tanks (including dewatering tanks), and excess ammonia-liquor storage tanks. These sources are generally in proximity and, like the tar decanter and flushing-liquor circulation tank, are all associated with the crude tar and ammonia liquor recovery operations practiced in the initial steps of the by-product recovery process. The proximity of the sources allows the use of a common large header to supply coke oven gas from the collecting main; smaller diameter piping can then connect the individual vent lines to the header. Because the liquid contents of these tanks result from water contact with the raw coke oven gas, coupled with the subsequent separation of tar and flushing liquor, no contamination problems are expected from a raw coke oven gas blanket. In addition, these sources can accept the low positive pressure (6 to 10 mm water) of the coke oven gas from the collecting main without danger of rupture.

With gas blanketing from the gas holder, a vapor destruction system is in place because the clean oven gas is burned to underfire the coke ovens and to recover the fuel value. One advantage of blanketing with clean coke oven gas from the gas holder is the elimination of oxidation reactions between oxygen in the air and organic materials in the vessels. These reactions often result in a sludge that may pose fouling and plugging problems in lines and process equipment. In addition, oxygen infiltration can cause tank vapors to reach the explosive limits of vapor when tanks are periodically emptied or when significant cooling takes place. Applying a positive pressure blanket would eliminate oxygen infiltration and maintain the vapor space in the tank above its upper explosive limit.

Gas blanketing with clean coke oven gas has been demonstrated for the control of emissions from sources associated with light-oil recovery, including the light-oil condenser, light-oil decanter, light-oil storage tank, wash-oil decanter, and wash-oil circulation tank. Again, the proximity of these sources allows the use of a common large header to supply coke oven gas from the gas holder; smaller branches of piping can then connect the individual vent lines to the header. For most vessels in the light-oil plant, source enclosure would require closing all vents to the atmosphere and connecting the tank's vent line to the gas blanketing line. Horizontal tanks in the light-oil plant may require some minor modifications to withstand a pressure of 36 to 46 cm (14 to 18 in) of water. As previously discussed, heat tracing and insulation can be used to avoid condensation, accumulation, and plugging in the lines. Steam-out connections can also be used for line cleaning, and three-way lubricated plug valves can be provided so that an individual line or vessel can be isolated for maintenance or sampling.

Gas blanketing with clean coke oven gas from the gas holder has been demonstrated for these sources at three by-product plants. At one plant, undesulfurized coke oven gas from the gas holder is used to control wash-oil decanters and wash-oil circulation tanks. At this plant, a header line is connected to the coke oven gas line exiting the wash-oil scrubbers. The tanks are connected with a line that runs from the header pipe. Isolating valves and steam-out connections are provided. However, none of the lines are heated or insulated. Although no pressure relief valves or controllers are used, water u-seals are placed in the lines to remove condensate and to protect the system from excessive pressure.

At a second plant, desulfurized gas from the battery underfire system is used to blanket the wash-oil decanters, wash-oil circulation tanks, light-oil decanters, and light-oil condensers. In a separate plant at the same location, an undesulfurized gas blanket is applied to light-oil decanters and wash-oil circulation tanks. All lines are steam traced and insultated.

At a third plant, undesulfurized coke oven gas from the gas holder was used to blanket the wash-oil decanter and circulation tank, two light-oil storage tanks, three light-oil condensers, and two light-oil decanters. Each emision source was equipped with three-way valves, flame arrestors, steam-out connections, steam tracing, and insulation. No major modifications or repairs were required to pressurize the emission sources.

Plant personnel have reported no safety problems with gas blanketing systems for emission sources in light-oil recovery operations. In addition, only routine operating problems, such as sticking valves, have been experienced. These difficulties can be avoided with good operation and maintenance practices.

It is the EPA conclusion that no safety or operating problems would preclude the application of gas blanketing to benzene storage tanks. For this source, however, coke oven gas is not recommended as the blanketing medium because of the possibility of contamination from components in the coke oven gas. However, nitrogen or natural gas can be used as a substitute. Emissions could be routed to the coke oven gas main and burned in the gas combustion system, or emissions may be routed to the gas main before light-oil removal and recovered in the wash-oil scrubbing operation. As with other sources, the benzene storage tanks must

be enclosed to accept a postive pressure gas blanket without leakage. In addition, heat-traced and insulated lines would be needed for winter operations due to the freezing temperature of benzene (42° F).

Wash-oil scrubbers. A wash-oil scrubber can be used to absorb benzene and other organics from vented emissions. Engineering analysis shows that application of a properly designed and operated wash-oil scrubber can attain a control efficiency for benzene of 90 percent. Although wash-oil scrubbers are less effective than gas blanketing, they were considered by the EPA because, in some cases, they could be less costly.

Wash-oil scrubber technology is already used in the coke by-product recovery industry to recover the light oil from the coke oven process gas stream. Light oil is a mixture composed primarily of benzene (60 to 85 percent) that also has toluene (6 to 17 percent), xylene (1 to 7 percent), solvent naphtha (0.5 to 3 percent), and other minor constitutents. The coke oven enters the scrubber from the bottom where it is contacted by wash oil flowing from the top of the scrubber, countercurrent to the gas flow. The wash oil is a petroleum straw oil with a boiling point over 200° C (392° F), has a high absorptive capacity for light oil, and does not react with the gas. After passing through the scrubber, the benzolized wash oil (wash-oil and light-oil mixture) is steam stripped in a wash-oil still to separate the light oil from the wash oil. The devenzolized wash oil is then cooled and recirculated back to the wash-oil scrubber. The absorption of the light oil by the wash oil is highly dependent on temperature; the absorption decreases as temperature increases. For this reason, the coke oven gas is cooled from about 60° C (140° F) to about 15–30° C (59–86° F) before it enters the scrubber. The temperature of the wash oil as it enters the scrubber is about 17.32° C (63–90° F); it is generally a few degrees hotter than the gas to prevent water condensation and emulsification problems. The wash-oil scrubber recovers about 90 percent of the light oil from the coke oven gas.

A wash-oil scrubber used to remove benzene from vented emissions would be of similar design, but scaled-down from the wash-oil scrubber used in the light-oil recovery process. Emission sources vented to the wash-oil scrubber must be enclosed so that vapors displaced from the sources due to working and breathing losses could not go anywhere except to the scrubber. The scrubber design analyzed by the EPA has no fan continuously venting the vapors to the scrubber. In the scrubber analyzed by the EPA, emissions would enter the bottom of an unpacked scrubbing chamber and contact a spray of wash oil from the top of the scrubbing chamber. The wash oil would be a slipstream taken from the wash-oil used in light oil recovery. The scrubber operating temperatures (e.g., the temperature of the gas leaving the scrubber) would be about 30° C (86° F), which is similar to the temperatures in the scrubber used in the light oil recovery process. The benzolized wash oil would be routed to the light-oil recovery plant, where the benzene would be recovered in the wash-oil still and the debenzolized wash oil would be cooled before being recirculated to the wash-oil scrubber. The engineering analysis shows that the scrubber can achieve 90 percent control efficiency for benzene. More details on specific design parameters are described later in this section.

A wash-oil scrubber was used as a control device at one plant (that is no longer operating) in the coke industry. As discussed below the design and operation of this scrubber differed significantly from a wash-oil scrubber that would achieve 90 percent control of benzene emissions. The scrubber was a portion of a large organic emission control project which principally consisted of installation of by-product recovery and control devices instead of flaring the coke oven gas. The wash-oil scrubber was applied to emissions vented from a tar storage tank, a tar dewatering tank, an excess ammonia-liquor storage tank, and an ammonia-liquor sump. Access manways on the storage tanks were covered and sealed. The sump was enclosed with a metal cover and gasket. Vent lines from each enclosed vessel carried emissions to a single scrubber. A slipstream of the wash oil used in the light-oil recovery process was diverted to the wash-oil scrubber. The benzolized wash oil from the scrubber was then routed to the wash-oil still in the light-oil recovery unit, where it was debenzolized and recirculated back to the wash-oil scrubber. As noted above, the wash-oil scrubber was part of a larger project to control total organic emissions rather than benzene emissions alone. The plant operator stated that the scrubber had never been tested and no records were available of estimates of the control efficiency. In addition, the plant is no longer operating. Therefore, no test data or company estimates of the design control efficiency are available. However, the EPA has concluded that this particular wash-oil scrubber system would not control benzene emissions. The main reason is that the temperatures of both the wash oil and the gas were significantly hotter than the temperatures (about 30° 86° F) characteristic of the gas and wash oil in EPA's scrubber design that achieves 90 percent control and in the scrubbers in the light oil recovery units. The wash-oil spray in the scrubber at this plant was a slipstream from the wash oil leaving the stripper, before it was cooled. Therefore, its temperature was 110° C (230° F), which is higher than the boiling point of benzene (80° C or 176° F). In addition, during the tar dewatering process, in which the tar is steam-heated to drive off water, the gas entering the scrubber without precooling would probably be around 100° C (212° F). At these temperatures for the wash oil and gas, the absorption of benzene by the wash oil would be negligible. Therefore, the EPA did not consider the design of the wash-oil scrubber at this particular plant for application as a benzene control device. This application demonstrates the enclosure and venting of sources to a wash-oil scrubber, and the compatibility of the wash-oil scrubber with the light-oil recovery system. However, to control benzene emissions, the wash oil and the gas would have to be cooled.

Wash-oil scrubbers were considered for controlling emissions from storage tanks containing light-oil, BTX, benzene, or excess ammonia-liquor. The pressure drop through the scrubber is negligible; therefore, the tanks would not be subjected to pressures significantly higher than normal operating conditions. Consequently, little modification of the tanks, other than covering and sealing any openings, would be necessary. Also, the wash-oil circulation, distillation, and cooling capacity needed to operate a scrubber applied to these sources is expected to be within the capacity of most existing light-oil recovery plants. Estimated costs for applying a wash-oil scrubber to storage tanks containing light-oil, BTX, benzene, or excess ammonia-liquor are less than the estimated costs of gas blanketing these sources. More details of the cost estimates can be found in the section of this preamble entitled "Selection of the Basis of the Proposed Standard" and in Chapter 8 of the BID.

Wash-oil scrubbers were also considered for controlling emissions from tar storage and dewatering tanks. As noted above, the emissions from these sources are at elevated temperatures. For the scrubber to achieve an emission reduction efficiency near 90 percent, the vapors would have

to be cooled, either by a condenser or by a sufficiently high flow rate of cool wash-oil spray. In addition, several other factors would have to be addressed to design a wash-oil scrubber to control benzene emissions from tar storage and dewatering tanks. These include the effects of a hot gas saturated with water, lack of equilibrium data for the mixture of organics expected to be in the emission stream, fouling of equipment from heavy organics from the tar, emulsification problems, and wastewater treatment problems. Even if it is assumed that these factors are not problems with the design, the estimated cost of using the wash-oil scrubber, including cooling the emissions, is higher than the estimated cost of gas-blanketing these sources. (Details of the cost estimates can be found in Chapter 8 of the BID.) Also, as discussed above, the emission reduction achieved by the wash-oil scrubber is less than by gas blanketing. For these reasons, the use of wash-oil scrubber for tar storage and dewatering tanks was not considered further.

The application of the wash-oil scrubber to process vessels other than storage tanks in the tar and light-oil recovery plants was also considered. These sources generally have higher benzene emission rates than the storage tanks. To control these sources, a higher volume of wash-oil spray would be needed. The wash-oil circulation, distillation, and cooling systems required to handle the wash oil would likely be beyond the capacity of most existing light-oil plants. In addition, other sources in the tar recovery plant would need to have the same design considerations described above for tar storage and dewatering tanks. Increasing the capacity of the wash-oil circulation, distillation, and cooling systems, and cooling the emissions before scrubbing them would make the wash-oil scrubber more expensive than gas blanketing, which is the more efficient control system. Therefore, use of the wash-oil scrubber was not considered further for sources other than storage tanks containing light oil, BTX, benzene, or excess ammonia-liquor. The Agency invites comments on its assessment of the application and costs of the wash-oil scrubber to control emissions at coke by-products plants.

Engineering design calculations indicate that a wash-oil scrubber with an inner diameter of 20.3 cm (8 in), an active height of 4 m (13 ft), and a wash-oil (solvent) feed rate of 0.03 *l*/s (0.5 gal/min) will achieve a continuous benzene control eficiency of at least 90 percent from light oil, BTX, benzene, and excess ammonia-liquor storage tanks. This design is based upon the following worst-case assumptions: (1) Maximum gas feed rate to the scrubber of 19 *e*/s (40.1 ft^3/min) resulting from a maximum anticipated liquid displacement rate of 19 *e*/s (300 gal/min) as tank is filled, (2) a maximum gas phase benzene concentration of 17 percent by volume (corresponding to storage of pure benzene liquid at 32° C), and (3) maximum scrubber operating temperature (i.e., temperature of the gas leaving the scrubber) of 32° C (90° F). Two other design parameters, which do not fall in the category of "worst case," are the following: (1) The spray nozzle that distributes wash oil within the column produces a mean droplet diameter of 1 mm, and (2) the smallest droplet produced by the same nozzle has a diameter of 0.2 mm.

For sources with gas phase benzene concentrations of less than 17 percent and for smaller gas phase (vent system) flow rates, smaller scrubbers with correspondingly lower wash-oil feed rates can be designed. However, a scrubber of the design summarized above will ensure that 90 percent efficiency is achieved at design (worst-case) conditions and that the benzene concentration in the absorber offgas stream can be maintained at or below the design level.

Light-oil sump cover. A tightly fitting cover can be used to reduce evaporative losses caused by wind blowing across the surface of a light-oil sump and mixing with benzene or other hydrocarbon vapors. A gasket material applied to the rim of the sump cover would provide a seal to prevent leakage and would also allow removal of the cover to permit access for sludge removal. A vertical vent could also be installed in the sump cover so excess pressure would not build up in the sump. Potential emissions from small pressure increases could be contained with the use of a water leg seal, a pressure relief device, or a vacuum relief device. Enclosing the sump would reduce evaporative emissions, but would still allow working losses (from increasing the liquid level in the sump) and breathing losses (from increasing the temperature of the liquid in the sump). For sumps operated at or near a constant liquid level, a 98-percent control efficiency is estimated for a tightly fitting sealed cover equipped with a vertical vent as compared to the uncontrolled situation with wind blowing across the exposed liquid surface.

Naphthalene Processing and Final Coolers. A process modification is an effective control technique for benzene emissions from naphthalene processing and direct-water final-cooler cooling towers. At a plant operating a direct-water final cooler, a process modification would consist of replacing the direct-water final cooler with a tar-bottom final cooler, converting the direct-water final cooler to a tar-bottom final cooler by adding a mixer-settler, or replacing the direct-water final cooler with a wash-oil final cooler. A control efficiency of 74 percent is estimated for direct-water final-cooler cooling tower emissions through the installation of the tar-bottom process or a tar mixer-settler; collection of the naphthalene by means of a tar or wash-oil system would also eliminate emissions from napthalene processing for an emission reduction of 100 percent. At a plant operating a tar-bottom final cooler, the process modification would be the replacement of the tar-bottom final cooler with a wash-oil final cooler. This control option would provide an industry-wide emission reduction of 100 percent from tar-bottom final-cooler cooling towers and naphthalene processing emissions.

Pumps. Fugitive emissions from pumps primarily result from leakage of process fluids around the pump drive shaft and through deteriorated seal packing or worn mechanical seal faces. These emissions can be reduced with the elimination of the seal by replacing the pump with a sealless pump or by using an improved seal (e.g., double mechanical seals). Because of process condition limitations, sealless pumps are not suitable for all pump applications. However, dual mechanical seal systems with a barrier fluid between the seals (and meeting certain other criteria) can achieve a benzene control efficiency of about 100 percent.

Another control option is the application of a leak detection and repair program based on monitoring each pump at monthly or quarterly intervals. Once detected, leaks from pumps usually can be repaired immediately because critically located pumps are spared at most by-product plants. Based on the leak detection and repair (LDAR) model (described in the EPA document, "Fugitive Emission Sources of Organic Compounds—Additional Information on Emissions, Emission Reductions, and Costs" [EPA-450/3-82-010]), monthly monitoring of pumps would achieve an industry-wide benzene control efficiency of about 83 percent, while quarterly monitoring would achieve an industry-wide control efficiency of abut 71 percent.

Valves. Fugitive emissions from valves result when valve packings or O-

rings that are used to limit leakage of process fluids around valve stems deteriorate. Most valve leaks can be repaired while the equipment is in service by tightening the packing gland. Plug valves may be repaired by the addition of grease. Some valves cannot be repaired while in service. These valves include block valves, whose removal for repair or replacement might require a process shutdown. Other valves, such as control valves with a manual bypass loop, can be isolated for repair or removal.

The control options considered for valves in benzene service include the implementation of a leak detection and repair program based on monthly or quarterly monitoring intervals. Monthly moitoring would achieve an industry-wide benzene control efficiency of about 72 percent, as compared to the 63-percent industry-wide control efficiency achievable with quarterly inspections. A third control option considered is equipping valves with leakless equipment such as sealed bellows valves. The control efficiency of this option is approximately 100 percent.

Exhausters. Emissions from exhausters also occur at the seal. Control options for exhausters include the installation of seal systems with the barrier fluid degassing reservior vented to a control device, or purging the barrier fluid and adding the fluid to a process stream, or maintaining the pressure in the barrier fluid above that of the stuffing box. The control efficiency for each of these methods is estimated at 100 percent. A second control option for exhausters is the implementation of a leak detection and repair program, based on quarterly or monthly monitoring intervals. Monthly monitoring would achieve a control efficiency of about 64 percent, as compared to the 55-percent control defficiency associated with quarterly inspections.

Pressure relief devices. Pressure relief devices may emit benzene fugitive emissions because of the failure of valve seating surfaces, improper reseating after relieving, or process operations near the relief valve set point. Fugitive emissions from pressure relief valves can be controlled by installing a rupture disc system upstream of these valves to prevent fugitive emissions from the valve seat. The control efficiency of the rupture disc system is approximately 100 percent. Emissions from pressure relief devices can also be controlled by venting emissions in a closed system to a control device, such as a flare. The control efficiency of this equipment option is at least 95 percent. However, use of a control device would also reduce emissions resulting from a pressure release in addition to the fugitive emissions. The reduction of these emissions would increase the overall control efficieny of this option to a level approaching that of the rupture disc system.

Implementation of a leak detection and repair program, based on monitoring at monthly or quarterly intervals, was also considered as a control option for pressure relief devices. Monthly and quarterly monitoring would achieve an industry-wide benzene control efficiency of 53 percent and 44 percent, respectively.

Open-ended lines. Fugitive emissions from open-ended lines can be controlled by installing a cap, plug, blind, or second valve on the open end of the line. Capping of open-ended lines and closed-loop sampling represent readily available technologies that have been applied in the industry and exhibit control efficiencies of approximately 100 percent. However, the acutal control efficiencies may depend on site-specific factors.

Sampling connections. When process samples are taken for analysis, obtaining a representative sample requires purging some process fluid through the sample connection. This sample purge could be vented to the atmosphere if the fluid is gaseous, and liquid sample purges could be drained onto the ground or into open collection systems where evaporative emissions would result. Fugitive emissions from sampling connections can be reduced by using a closed-purge sampling system that eliminates purging of process material and provides a benzene control efficiency of about 100 percent.

Selection of Basis of Proposed Standard

EPA selected a level for the benzene standard for coke by-product recovery plants through a two-step process. The first step in determining the basis of the proposed standard was the selection of the best available technology (BAT) as the minimum level of control. Best available technology for new and existing sources is technology which, in the judgment of the Administrator, is the most advanced level of control considering the economic, energy, and environmental impacts and any technological problems associated with the retrofitting of existing sources.

After selecting BAT, EPA identified a level of control more stringent than BAT and evaluated the incremental reductions in health risks obtainable against the incremental costs and economic impacts estimated to result from the application of the more stringent control level. This provides a comparison of the costs and economic impacts of control with the benefits of further risk reduction. The benefits of risk reduction are expressed in terms of the estimated annual leukemia incidence and the estimated risk to the most exposed population. The results of this comparison determine whether, in the judgement of the Administrator, the residual risks remaining after application of BAT are unreasonable. If the risk remaining after application of BAT is determined to be unreasonable, further controls would be required.

This approach while recognizing that risk-free levels of exposure to carcinogens such as benzene may not exist, also considers the technological and economic factors that affect the pursuit of a "risk-free" or zero emissions goal and the uncertainties inherent in the estimation of carcinogenic risks. [For more detail, see the EPA document, "Response to Public Comments on EPA's Listing of Benzene Under Section 112" (EPA–450/5–82–003).]

In selecting BAT, EPA first considered the cost of control for each emission source by examining the annual cost of each benzene emission control option for each source and the resultant emission reduction. The emission sources considered for regulation are indicated on Table 2. EPA then examined the nonair environmental, energy, and economic impacts for the collection of the control options tentatively selected, based on a consideration of cost per megagram of emission reduction for each source to determine if the collection represents BAT for the industry as a whole. If these impacts were reasonable, the control techniques were selected as BAT and then were used in estimating the risks remaining after application of BAT.

The emission reductions and the average and incremental costs per megagram of benzene emission reduction are presented on Table 3. Costs per megagram of emission reduction (average and incremental) were calculated in terms of total emissions (benzene and other volatile organic compounds [VOC's]), as well as benzene alone. Control of benzene emissions also result in VOC control at no additional cost. Therefore, VOC control is an added benefit of benzene control. In regulatory decision-making regarding the acceptability of the cost for emission reductions achieved by a control technique, it is appropriate to consider the VOC as well as the benzene emission reductions. However, VOC emission reductions were considered only in the sense that VOC emission reductions can add weight to selecting a control technique as BAT.

TABLE 3. NATIONWIDE EMISSION REDUCTIONS AND COSTS OF CONTROL

Emission source	Control option[a]	Benzene				Total emissions (benzene and other VOC)			
		Uncontrolled emissions (Mg/yr)	Emission reduction (Mg/yr)	Average cost effectiveness ($/Mg)[b]	Incremental cost effectiveness ($/Mg)[c]	Uncontrolled emissions (Mg/yr)	Emission reduction (Mg/yr)	Average cost effectiveness ($/Mg)[b]	Incremental cost effectiveness ($/Mg)[c]
1. Final-cooler cooling tower[d]	1. Tar-bottom final cooler[e]	8,370	6,240	(310)	(310)	100,600	67,300	(29)	(29)
	2. Wash-oil final cooler	8,370	8,370	4,200	18,000	100,600	100,600	350	1,100
2. Tar decanter tar-intercepting sump, and flushing liquor circulation tank	Gas blanketing	8,340	8,080	(310)	(310)	17,800	17,200	(140)	(140)
3. Tar storage tanks and tar-dewatering tanks	Gas blanketing	1,430	1,410	640	640	33,400	32,900	27	27
4. Light-oil condenser, light-oil decanter, wash-oil decanter, and wash-oil circulation tanks	Gas blanketing	3,490	3,420	120	120	4,940	4,890	85	85
5. Excess ammonia-liquor storage tank	1. Wash-oil scrubber	417	376	1,000	1,000	597	536	710	710
	2. Gas blanketing	417	409	1,200	2,900	597	585	810	1,900
6. Light-oil storage tanks and benzene-mixture storage tanks	1. Wash-oil scrubber	299	269	1,800	1,800	424	385	1,200	1,200
	2. Coke oven gas blanketing	299	293	2,100	6,100	424	418	1,500	4,500
7. Benzene storage tanks	1. Wash-oil scrubber	71	63	1,100	1,100	71	63	1,100	1,100
	2. Nitrogen or natural gas blanketing	71	69	1,700	8,100	71	69	1,700	8,100
8. Light-oil sump	Sealed cover	632	619	(230)	(230)	909	883	(160)	(160)
9. Pumps	1. Quarterly inspections	463	328	100	100	669	473	72	72
	2. Monthly inspections	463	386	110	120	669	557	73	84
	3. Dual mechanical seals	463	463	2,800	16,000	669	669	1,900	11,000
10. Valves	1. Quarterly inspections	312	196	(230)	(230)	450	283	(160)	(160)
	2. Monthly inspections	312	226	(110)	670	450	327	(76)	460
	3. Sealed bellows valves	312	312	17,000	61,000	450	450	12,000	42,000
11. Exhausters	1. Quarterly inspections	25	14	1,300	1,300	107	59	290	290
	2. Monthly inspections	25	16	2,600	9,900	107	69	590	2,400
	3. Degassing reservoir vents	25	25	24,000	62,000	107	107	5,700	15,000
12. Pressure-relief devices	1. Quarterly inspections	209	93	(400)	(400)	302	135	(280)	(280)
	2. Monthly inspections	209	110	(300)	270	302	158	(210)	200
	3. Rupture discs	209	209	870	2,200	302	302	600	1,500
13. Sampling connection systems	Closed-purge sampling	41	41	1,200	1,200	59	59	820	820
14. Open-ended lines	Cap or plug	14	14	700	700	20	20	480	480

[a] Further discussion of control techniques used can be found in Chapters 4 and 6 of the background information document (BID).

[b] Average (mid-range) 1982 dollars per megagram (cost effectiveness) = net annual control cost per source ÷ annual benzene emission reduction per source. The values in parentheses denote a saving in costs.

[c] Incremental dollars per megagram = (net annual cost of the control technique − net annual cost of the next less restrictive control technique) ÷ (annual emission reduction of control technique − annual emission reduction of the next less restrictive control technique). Values in parentheses denote savings.

[d] Includes naphthalene processing.

[e] Nineteen plants have direct-water final coolers, and 12 plants have tar-bottom final coolers.

The average cost effectiveness (the cost of control per megagram of emission reduction) was calculated by examining the cost effectiveness of each control option (i.e., the cost of going from an uncontrolled status to the level of control represented by a control option). Where more than one control option was available, EPA examined the incremental cost effectiveness. That is, EPA compared the more stringent level of control to the next less stringent level of control to evaluate the reasonableness of the additional cost incurred by the more stringent level of control in view of the additional benzene emission reduction that would be achieved. The incremental cost effectiveness between any two alternate control techniques was calculated as the difference in net annualized costs divided by the difference in the annual emission reductions of the alternate control techniques. If the incremental cost in comparison to the incremental emission reduction was judged as unreasonable, then the next increment was examined until a control technique with a reasonable cost in comparison to the emission reduction was available. In all cases, EPA selected as BAT (considering costs) the control option that provided the most emission reduction and yet had a reasonable average and incremental cost per megagram of emission reduction.

It should be noted that the control costs do not represent the actual amounts of money spent at any particular plant site. Rather, the cost of emission reduction systems will vary according to the particular products produced, production equipment, plant layout and system design, geographic location, and company preferences or policies. However, these costs and emission reductions are considered typical of control techniques for benzene emission sources within coke by-product recovery plants. Although no construction of new by-product plants is expected during the next 5 years, new sources could be constructed. Because new sources do not incur retrofit costs, the costs of control are generally less than for existing sources. However, the cost of control for new sources in by-product plants is not sufficiently less to warrant a separation examination of new source costs.

In Table 3, the emission sources for which gas blanketing was considered are grouped according to the most cost-effective approach for implementing this control technique. For example, the tar decanter, tar-intercepting sump, and flushing-liquor circulation tank are usually in close proximity. The most cost-effective system design for these (and other emission source groupings) would consist of the large header pipe from the collecting main to the general area of the sources. Smaller diameter piping would then connect the header pipe to each source to provide the blanketing gas.

EPA first examined the cost per unit of benzene emission reduction for all

sources for which only one control option was considered. These groups of sources include: (1) Tar decanters, tar-intercepting sumps, and flushing-liquor circulation tanks; (2) tar storage tanks and tar-dewatering tanks; (3) light/oil condensers, light-oil decanters, wash-oil decanters, and wash-oil circulation tanks; (4) light-oil sumps; (5) sampling connections; and (6) open-ended lines. The cost of control for these sources ranges from a net credit or cost savings to a high of $1,200/Mg of benzene emission reduction. These costs are considered reasonable for the emission reduction achieved by the applicable control option. For this reason, these control options were tentatively selected as BAT, considering costs of control for each source. These control options include: (1) Use of the gas blanketing system for tar decanters, tar-intercepting sumps, flushing-liquor circulation tanks, tar storage tanks, tar-dewatering tanks, light-oil condensers, light-oil decanters, wash-oil decanters, and wash-oil circulation tanks; (2) a sealed cover for the light-oil sump; (3) closed-purge sampling for sampling connection systems; and (4) a cap or plug for open-ended lines.

EPA next examined two control options for naphthalene processing and final coolers: Wash-oil final coolers and tar-bottom final coolers. Wash-oil final coolers, the more effective of the two technologies, would virtually eliminate benzene emissions. applying this technology rather than tar bottom final coolers would result in an additional (incremental) benzene emission reduction of about 2,130 Mg/yr and an additional total emission reduction (including benzene and other VOC) of about 33,300 Mg/yr. The incremental annualized cost for wash-oil final coolers compared with tar bottom final coolers would be about $37.2 million/yr. The incremental cost of wash-oil final coolers over tar bottom final coolers is $18,000/Mg of benzene emission reduction, which is a relatively high incremental cost effectiveness. This relatively high incremental cost effectiveness is substantially reduced when the total emission reduction (including benzene and other VOC) is considered. However, the capital costs of the wash-oil final cooler system are also relatively high, ranging from $2.1 million for a small model plant to $7.9 million for a large model plant. An analysis of these capital costs compared to annual net income and investment indicated a potential for an unreasonably adverse economic impact on some firms. Based on a combination of all these cost-related factors, EPA rejected the selection of wash-oil final coolers as BAT and selected tar bottom final coolers.

For storage tanks containing excess ammonia-liquor, light-oil, BTX, or benzene, EPA considered two control options—gas blanketing and wash-oil scrubbers. Gas blanketing of these sources would provide a benzene control efficiency of at least 98 percent, as compared to the 90-percent emission reduction provided by a wash-oil scrubber. The average cost per megagram of benzene emission reduction for gas blanketing of these sources ranges from about $1,200/Mg to a high of about $2,100/Mg; these costs are considered reasonable for the emission reduction achieved, especially considering that when the VOC emission reduction is added in, the average cost effectiveness is reduced to a range of about $810/Mg to about $1,700/Mg.

However, the wash-oil scrubber may be a viable option for these sources at some plants. A scrubber could be less expensive than gas blanketing. For this reason, EPA examined the nationwide incremental costs and emission reduction of 90 percent control with wash-oil scrubbers as compared to 98 percent control by gas blanketing.

For storage tanks containing light oil or benzene mixtures, the incremental cost associated with the gas blanketing option compared to the wash-oil scrubber option would be $147,000/yr and the incremental benzene emission reduction would be 24 Mg/yr; this represents an incremental cost effectiveness of about $6,100/Mg of benzene emission reduction. Furthermore, the use of gas blanketing would reduce total emissions (including benzene and VOC) by about 33 Mg/yr more than the wash-oil scrubber option; this represents an incremental cost effectiveness of about $4,500/Mg of total emission reduction, including benzene and other VOC. Because the incremental cost effectiveness of gas blanketing for benzene ($6,100/Mg) is relatively high and because the additional VOC emission reduction does not add enough weight to convince EPA that the costs are reasonable, EPA decided to tentatively select wash-oil scrubbers rather than gas blanketing as BAT, considering costs, for storage tanks containing light oil or benzene mixtures.

For storage tanks containing benzene, the incremental cost associated with gas blanketing (with nitrogen or natural gas) compared to the wash-oil scrubber option would be about $45,600/yr and the incremental benzene emission reduction would be 6/Mg/yr; this represents an incremental cost effectiveness of about $8,100/Mg of benzene emission reduction. No emission reduction other than benzene would be achieved because benzene is the only organic emitted from this source. Because the incremental cost effectiveness of gas blanketing for benzene ($8,100/Mg) is relatively high and because there is no additional VOC emission reduction that would be achieved by gas blanketing to convince EPA that the costs are reasonable, EPA tentatively selected wash-oil scrubbers as BAT, considering costs, for benzene storage tanks.

For storage tanks containing excess ammonia-liquor, the incremental cost associated with the gas blanketing option compared to the wash-oil scrubber option would be about $94,000/yr and the incremental benzene emission reduction would be about 33 Mg/yr; this represents an incremental cost effectiveness of about $2,900/Mg of benzene emission reduction. The use of gas blanketing would reduct total emissions (including benzene and VOC) by 49 Mg/yr more than the wash-oil final scrubber option; this represents an incremental cost effectiveness of about $1,900/Mg of total emission reduction (including benzene and other VOC). Because the incremental cost effectiveness of gas blanketing for benzene ($2,900/Mg) is relatively high and because the additional VOC emission reduction does not add enough weight to convince EPA that the costs are reasonable, EPA decided to tentatively select wash-oil scrubbers rather than gas blanketing as BAT, considering costs, for storage tanks containing excess ammonia-liquor.

Although the wash-oil scrubber was selected as the tentative BAT for these sources, some plants may prefer to apply gas blanketing due to site-specific factors or due to the potentially lower maintenance requirements. Because gas blanketing achieves a better control efficiency, the selection of the wash-oil scrubber as BAT would not preclude the use of gas blanketing (or any other control device that is designed and operated to achieve a 90-percent benzene control efficiency).

EPA considered three control options for pumps: Dual mechanical seal systems, monthly leak detection and repair, and quarterly leak detection and repair. (These are listed in order of decreasing control efficiency and cost.) EPA considered the most stringent option, dual mechanical seals, first. The incremental cost associated with the use of dual mechanical seal systems compared to the monthly leak detection

and repair option would be $1.2 million/yr and the incremental benzene emission reduction would be 77 Mg/yr; this represents an incremental cost effectiveness of about $16,000/Mg of benzene emission reduction. Furthermore, the use of dual mechanical seals would reduce total emissions (including benzene and other VOC) by 112 Mg/yr more than the monthly leak detection and repair option; this represents an incremental cost effectiveness of about $11,000/Mg total emission reduction. Because the incremental cost effectiveness of dual mechanical seals for benzene ($16,000/Mg) is relatively high and because the additional VOC emission reduction does not add enough weight to convince EPA that the costs are reasonable, EPA decided not to select dual mechanical seals as BAT, considering costs, for pumps.

Next, EPA considered monthly leak detection and repair. The incremental cost associated with monthly leak detection and repair compared with the quarterly leak detection and repair program would be about $6,600/yr and the incremental benzene emission reduction would be 58 Mg/yr; this represents an incremental cost effectiveness of $120/Mg benzene emission reduction. Because EPA considers the incremental cost effectiveness of monthly detection and repair reasonable and it gets more emission reduction than quarterly leak detection and repair, EPA decided to tentatively select monthly leak detection and repair as BAT, considering costs, for pumps.

EPA considered three control options for valves: Sealed bellows valves, monthly leak detection and repair, and quarterly leak detection and repair. EPA considered the most stringent option, sealed bellows valves, first. The incremental cost associated with the use of sealed bellows valves compared with monthly leak detection and repair is $5.2 million/yr and the incremental benzene emission reduction would be 86 Mg/yr; this represents an incremental cost effectiveness of about $61,000/Mg benzene emission reduction. Furthermore, the use of sealed bellows valves would reduce total emissions (including benzene and other VOC) by 123 Mg/yr more than monthly leak detection and repair; this represents an incremental cost effectiveness of about $42,000/Mg. Because the incremental cost effectiveness of sealed bellows valves for benzene ($61,000/Mg) is relatively high and because the additional VOC emission reduction does not add enough weight to convince EPA the costs are reasonable, EPA decided not to select sealed bellows valves at BAT, considering costs, for valves.

Next, EPA considered monthly leak detection and repair. The incremental cost associated with monthly leak detection and repair compared with the quarterly leak detection and repair program would be $20,200/yr and the incremental benzene emission reduction would be 30 Mg/yr; this represents an incremental cost effectiveness of $670/Mg benzene emission reduction. Because a higher emission reduction would be achieved by monthly monitoring as compared to quarterly monitoring, at a reasonable cost, EPA tentatively selected monthly monitoring as BAT, considering costs, for valves.

For exhausters, the most stringent control option would require the use of degassing reservior vents. This equipment would reduce benzene emissions by approximately 100 percent. The incremental cost of degassing reservior vents over monthly inspections is $568,000/yr and the incremental benzene emission reduction would be 9 Mg/yr; this represents an incremental cost effectiveness of about $62,000/Mg. The use of this equipment would reduce total emissions (including benzene and other VOC) by about 38 Mg/yr more than the monthly inspection option, thereby reducing the overall incremental cost effectiveness to $15,000/Mg total emission reduction (including benzene and other VOC). Because the incremental cost effectiveness of degassing vents for benzene control is relatively high and because the additional VOC emission reduction does not add enough weight to convince EPA that the costs are reasonable, degassing reservior vents were not selected as BAT, considering costs, for exhausters.

Monthly inspections of exhausters would reduce benzene emissions by about 64 percent, or by about 2 Mg/yr more benzene than quarterly leak detection and repair. The incremental cost of monthly monitoring over quarterly monitoring is about $24,000/yr; this represents an incremental cost effectiveness of about $9,900/Mg of benzene emission reduction. Monthly inspections would reduce total emissions (including benzene and other VOC) by about 10 Mg/yr more than the total emission reduction achieved by quarterly monitoring; this reduces the overall cost effectiveness of this option to $2,400/Mg total emission reduction (including benzene and other VOC). Because the incremental cost effectiveness of monthly inspections for benzene control is relatively high, and because the additional VOC emission reduction does not add enough weight to convince EPA that the costs are reasonable, monthly monitoring was not selected as BAT, considering costs, for exhausters.

Quarterly inspections of exhausters would reduce benzene emissions by 14 Mg/yr at a cost of about $17,300/yr. This represents a cost effectiveness of about $1,300/Mg of benzene emission reduction. Furthermore, quarterly inspections would reduce total emissions (including benzene and other VOC) by about 59 Mg/yr; this reduces the overall cost effectiveness of this option to $290/Mg total emission reduction (including benzene and other VOC). Because EPA considers the cost effectiveness of quarterly monitoring to be reasonable, particularly in view of the added VOC emission reduction, EPA tentatively selected quarterly monitoring as BAT, considering costs, for exhausters.

Of the control options considered for pressure relief devices, use of a rupture disc system would provide the greatest benzene emission reduction (approximately 100 percent). The incremental cost associated with the use of a rupture disc system compared to the monthly leak detection and repair option would be $215,000/yr and the incremental benzene emission reduction would be 99 Mg/yr; this represents an incremental cost effectiveness of about $2,000/Mg benzene emission reduction. Furthermore, the use of the rupture disc system would reduce total emissions (including benzene and other VOC) by 144 Mg/yr more than the monthly leak detection and repair option; this represents an incremental cost effectiveness of $1,500/Mg total emission reduction. Because EPA considers the incremental cost effectiveness of the rupture disc system to be reasonable, particularly in view of the added VOC emission reduction, and because rupture disc systems get the most emission reduction, EPA tentatively selected that option as BAT, considering costs, for pressure relief devices.

Before making a final selection of control options as BAT, EPA considered the nonair quality environmental impacts and the economic and energy impacts to determine if the tentative selection of control options as BAT should be altered. Implementation of the control options tentatively selected as the basis of the proposed standard would reduce nationwide benzene emissions from coke by-product recovery plants from their current level of about 24,100 Mg/yr to about 2,700 Mg/yr, an overall emission reduction of

approximately 89 percent. Total uncontrolled nationwide emissions of benzene and other VOC's would be reduced from their current estimated level of 160,000 Mg/yr to about 35,000 Mg/yr, a 78-percent reduction.

No adverse environmental impacts are associated with these control options. Use of the gas blanketing system would actually tend to reduce the amount of benzene in process wastewater, in addition to solid waste disposal problems associated with sludge formation. Use of the gas blanketing system also provides the potential for fuel savings and increased product recovery. If the benzene in the recovered coke oven gas were used to underfire the coke oven battery, the national energy savings from the recovered gases would total about 30,000 terajoules (TJ) per year (0.028 quad/yr), assuming a recovery rate of 21.3 *l* of gas/min/Mg of coke per day. Further information detailing the development and consideration of these control techniques and the associated environmental and energy impacts, and the costs associated with each control option is presented in Chapters 6, 7, and 8 of the BID.

The total national capital and annualized costs of these control options also are considered to be reasonable. The total national capital costs associated with these control options are estimated at about $23.8 million over the baseline (1982 dollars), including the cost of a monitor for leak detection. Light-oil recovery credits result in a savings in total annualized costs for furnace coke producers, as compared to the baseline. (Even though the controls selected as BAT may result in an annualized credit, in general, industries do not necessarily elect to install such controls in the absence of a regulation, because they might be able to attain a higher rate of return on their capital investment if given the opportunity to invest elsewhere.) The price of foundry coke could increase by as much as $0.24/Mg, an increase of less than 1 percent from the baseline price, while the price of furnace coke would increase by less than $0.02/Mg (1982 dollars). An economic analysis indicates that the industry trend is to pass through some increase in costs to consumers. Further information regarding the economic impacts of these control options is presented in Chapter 9 of the BID.

In summary, these control options were considered by EPA to have reasonable incremental costs per megagram of benzene emissions reduced. The environmental, energy, and economic impacts are also positive or negligible. Less restrictive control options were not considered further because they would achieve less benzene emission reduction and because no cost, economic, energy, or nonair quality environmental impacts necessitated further examination of these less restrictive control options. The control options selected as BAT include: (1) A gas blanketing system for process vessels, and tar storage and dewatering tanks; (2) a wash-oil scrubber for storage tanks containing light oil, BTX, refined benzene, or excess ammonia-liquor; (3) the replacement of the direct-water final cooler with a tar-bottom final cooler or the conversion of the direct-water final cooler by the addition of a mixer-settler; (4) a sealed cover for the light-oil sump; (5) monthly monitoring for pumps and valves; (6) quarterly monitoring for exhausters; (7) a rupture disc system for pressure relief devices; (8) closed-purge sampling for sampling connections; and (9) caps or plugs for open-ended valves or lines.

After selecting these control options as BAT, EPA evaluated the estimated health risks remaining after application of BAT to determine if they were unreasonable in view of the estimated health risk reductions, costs, and economic impacts that would result if a more stringent regulatory alternative were applied. After the application of BAT, the annual leukemia incidence is estimated at about 0.19 case per year and the remaining maximum lifetime risk of acquiring leukemia is estimated at 3.0×10^{-4} for the most exposed group.

EPA considered the next most cost-effective control option beyond BAT—requiring storage tanks containing light oil, BTX, refined benzene, or excess ammonia-liquor to use a gas blanketing system, and requiring monthly monitoring for exhausters. Implementation of this control option would further reduce benzene emissions by about 65 Mg/yr. Requiring this higher level of control in lieu of BAT would not significantly change the estimated remaining leukemia incidence and the maximum lifetime risk. For this reason, the next more cost-effective control option beyond BAT was also examined.

The next more effective control option beyond BAT would be to require wash-oil final coolers, in addition to monthly monitoring for exhausters and gas blanketing for storage tanks containing light oil, BTX, refined benzene, or excess ammonia-liquor. This option would reduce benzene emissions by an additional 2,200 Mg/yr. This benzene emission reduction would result in a reduction in the estimated leukemia incidence due to benzene exposure from coke by-product recovery plants from about 0.19 case per year at the BAT level to about 0.06 case per year. The estimated maximum lifetime risk would be reduced from 3.0×10^{-4} at the BAT level to about 2.4×10^{-4} at the beyond BAT level. This action would result in a total capital cost of $131 million, and an incremental annualized cost of $37.5 million/yr compared with BAT. The capital costs of this option, particularly those associated with the wash-oil final cooler system, would be relatively high on a per plant basis, ranging from $2.1 million for a small model plant to $7.9 million for a large model plant. These relatively high capital costs would also result in relatively high annualized costs on a per plant basis, ranging from $0.7 million/yr for a small model plant to about $3.2 million/yr for a large model plant. An analysis of these capital costs compared to annual net income and investment indicated a potential for an unreasonably adverse economic impact on some firms. Because of the relatively small health benefits to be gained with the additional costs and the potential adverse economic impacts on some firms of requiring the wash-oil final cooler option, EPA considers the risks remaining after application of BAT not to be unreasonable. For this reason, EPA judged the level of control selected as BAT to provide an ample margin of safety and decided not to require a more stringent level of control than BAT for coke by-product recovery plants.

Selection of Emission, Equipment, Work Practice, Design, and Operational Standards

Section 112 of the Clean Air Act requires that an emission standard be established for control of a hazardous air pollutant unless, in the judgment of the administrator, it is not feasible to prescribe or enforce such a standard. Section 112(e)(2) of the Act defines the following conditions under which it is not feasible to prescribe or enforce an emission standard: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant, or (2) if the application of measurement methodology is not practicable because of technological or economic limitations. Section 112(e)(1) allows that if an emission standard is not feasible to prescribe or enforce, then the Administrator may promulgate a design, equipment, work practice, or operational standard, or combination thereof.

The basis of the proposed standard selected for tar decanters, tar-

intercepting sumps, tar storage and dewatering tanks, flushing-liquor circulation tanks, light-oil condensers, light-oil decanters, wash-oil decanters, and wash-oil circulation tanks is a gas blanketing system. A gas blanketing system is not considered "leakless" equipment. Although this control technique could possibly achieve a 100-percent benzene control efficiency to meet a zero emissions limit when first installed, the gradual deterioration of sealing materials, even with proper operation and maintenance, could eventually result in vapor leaks. In addition, fugitive emissions may also be released from opening such as access hatches and sampling ports, which are necessary for proper operation and maintenance of the source. Emissions may also occur during emergency pressure-release episodes. Thus, a 100-percent emission reduction could not be achieved on a continuous basis.

Vapor leaks from the system cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant. For this reason, EPA has concluded that it is not feasible to prescribe or enforce an emission limit applicable to the gas blanketing system and has decided to propose for these sources a combination of equipment and work practices standard. The proposed equipment standard requires each affected source to be totally enclosed with emissions ducted to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process where the emissions will be recovered or destroyed. A positive-pressure system using dirty or clean coke oven gas, nitrogen, or natural gas as the gas blanket can be used. Pressure relief devices, vacuum relief devices, access hatches, and sampling ports would be the only openings allowed on each source, except for tar decanters. An additional opening to allow clearance for sludge conveyors would be permitted on tar decanters. However, the proposed standard would require that the access hatch and sampling port be equipped with a gasket and a cover or lid, which remains closed at all times to prevent the release of emissions, unless the hatch or port is actually in use.

Sections 112(e)(1) and 302(k) of the Clean Air Act require that design, equipment, work practice, and operational standards include provisions to ensure the proper operation and maintenance of the equipment. Use of gas blanketing on enclosed sources can be designed to be leakless; however, emissions could result if holes or other openings occur in sealing material used on a source or the piping comprising the gas blanketing system. Gaps may also develop between a seal and the shell of a tank or other type of process vessel. Gaps can develop as a result of the deterioration of sealing materials, shell deformations, or the inability of a seal to conform to varying gaps because of a loss of seal flexibility.

To ensure proper operation and maintenance of the gas blanketing system, the proposed equipment standards would require the semiannual monitoring of all connections used on the control system and all sealing materials used to enclose the source for evidence of leaks. This would be performed using the test for "no detectable emissions" in Reference Method 21. An instrument reading indicating an organic chemical concentration greater than 500 ppm above a background concentration, as measured by Reference Method 21, would indicate the presence of a leak. As discussed in the section of this preamble entitled, "Selection of Performance Test Method," an organic chemical concentration of 500 ppm above a background concentration was selected as the leak definition for these sources, based on considerations relating to the calibration procedures and instrument capabilities. The owner or operator would also be required to conduct a semiannual visual check of each source and the ductwork of the control system for defects such as gaps or tears.

The proposed standard would also require that an initial attempt at repair of any leak or other defect detected by visual check or instrument monitoring be made within 5 days of detection. Repair of the leak or defect would be required within 15 days of the date of detection. The maintenance of records indicating the date of each inspection (instrument and visual), the equipment found to be leaking, and the date of repair would also be required. The cost of inspection of each source and control system would be about 1 person-hour. Because a low incidence of equipment failures is expected, requiring frequent inspections of the numerous sources at a typical plant would be unreasonable. For this reason, EPA decided to require that such inspections be conducted on a semiannual basis.

However, proper maintenance of the system is essential to ensure proper operation and, consequently, the effectiveness of the system. To help ensure proper maintenance, the proposed regulation requires an annual maintenance inspection for system problems that could result in abnormal operation, such as plugging problems, sticking valves, or plugged condensate traps. The owner or operator would be required to make a first attempt at any necessary repairs within 5 days of detection, with repair within 15 days. If a system blockage should occur, the proposed regulation requires the owner or operator to conduct an inspection and make any necessary repairs immediately upon detection of the blockage. If a blockage or plugging problem were found, compressed air or a live steam purge could be used to clear the line. However, neither inspection should require a process shutdown.

A wash-oil scrubber with a 90-percent efficiency was selected as the basis of the proposed standard for storage tanks containing light oil, BTX, refined benzene, or excess ammonia-liquor. Fixed roof tank mass emissions vary considerably as a function of tank capacity and the utilization rate of the storage tank. Because of the wide variation in the amount of benzene vapors being emitted from the different types of storage tanks, a mass emission limit cannot be selected that would be achievable on a worst-case basis (i.e., large tank capacity, high vapor pressure, and high utilization rate), and at the same time would not allow the construction of control devices that are less effective than BAT. On this basis, EPA rejected any type of mass emission format for this section of the proposed standards.

The possibility of establishing an emission standard in a reduction efficiency format for storage tanks controlled by an add-on control device, such as a wash-oil scrubber, was then examined. Emissions from storage tanks are variable and are often at flow rates that are too low to measure. When liquid is entering a tank, the liquid surface rises, forcing vapors above the liquid surface out of the tank. While this is occurring, the vapor flow rate and the emissions are large. When liquid is exiting the tank, the liquid surface falls, and the resulting pressure differential sucks air or a blanketing material into the tank. During these operations, vapor flows into the storage tank resulting in no atmospheric emissions. When the liquid level is held constant, pressure differentials resulting from diurnal temperature variations expel vapors at very low flow rates at intermittent times during the cycle.

Certain components of uncontrolled emissions have been measured in very specialized tests conducted by the EPA and the petroleum industry. Total emissions have not been measured,

however, and to do so would require that the operation of the tank be strictly controlled during the testing period. Because of methodology problems, it may not be possible to measure both the flow rate and the concentration simultaneously. This would cast doubt on the accuracy of the measurement. For these reasons, it was concluded that it is impracticable to measure the emissions exiting the storage tank. For the same reasons, it would be impracticable to measure the emissions captured by the closed vent system connecting the control device to the source or entering the control device. Therefore, it was concluded that an emission standard in a reduction efficiency format is not feasible for control devices.

Because reduction efficiency cannot be measured practicably, it is infeasible to establish an emission standard requiring a percent reduction efficiency. A design standard requiring a reduction efficiency design specification, however, is feasible. The possibility of establishing a "design, equipment, work practice, or operational standard, or combination thereof" was, therefore, examined. A reduction efficiency design standard is advantageous in that it accounts for the wide variation in emission and flow rates being vented from the tank, and it would require the use of BAT control devices on all tanks. Therefore, the Administrator concluded that the standard for new and existing tanks storing light oil, benzene mixtures, benzene, or excess ammonia-liquor be a control system designed and operated to reduce emissions by 90 percent. The 90-percent design standard could be met using a wash-oil scrubber (or any other control system capable of achieving the 90-percent emission reduction, such as a gas blanketing system).

The proposed regulation would require that each tank be totally enclosed and sealed with emissions vented to the control device that is used to achieve compliance. Pressure relief devices, vacuum relief devices, access hatches, and sampling ports would be the only openings allowed on each tank. Each access hatch and sampling port must be equipped with a gasket and a cover or lid that is kept in a closed position when not in actual use. To ensure that the source and vent system are properly maintained so that emissions continue to be vented to the control device instead of being leaked to the atmosphere, the proposed standard would require the same work practices proposed for gas blanketed sources. That is, the proposed standard would require the semiannual monitoring of all seals or connections on the source and vent for leaks using Reference Method 21, and visual check of the source and vent ductwork for defects such as gaps or tears. Also included would be the annual maintenance inspection for problems that could result in abnormal operation, such as plugging problems. The same provisions that are associated with these work practices for gas blanketed sources (for example, monitoring technique, repair provisions, recordkeeping, and reporting) would apply for these storage tanks.

To help ensure the proper operation and maintenance of the control device, the proposed standard also would include monitoring of parameters that indicate operation of the control device. For a wash-oil scrubber, the parameters that would need to be monitored to ensure proper operation and maintenance are the temperature of the gases exiting the scrubber, the wash-oil flow rate, and the pressure of the wash oil at the scrubber spray nozzle. Any drop in the wash-oil flow rate or pressure or any increase in the exit gas temperature as compared to the parameters specified in the design of the scrubber could indicate that a 90-percent emission reduction was not being achieved. A description of these occurrences would be included in the semiannual report.

The proposed standard for pressure relief devices is based on the installation of rupture discs upstream of the relief valve to prevent leaks. Measurement methods for determining the quantitative emission rate from pressure relief devices are not practicable because measurement would require the bagging of each device, which is an expensive procedure. Reference Method 21 does not provide for quantitative emission measurements, but does provide for the detection of leaks. Because fugitive emissions from pressure relief devices equipped with rupture discs would not be expected unless an overpressure release occurs, it is feasible to prescribe a "no detectable emissions" limit for pressure relief devices. An instrument reading of less than 500 ppm of organic compounds by volume above a background concentration, as measured by Reference Method 21, would indicate that fugitive emissions were below the "no detectable emissions" level.

The proposed emission limit would not apply to discharges during overpressure conditions because the function of the device is to discharge process gas, thereby reducing dangerous high pressures within the process. However, the proposed standard would specify that the device be returned to a state of "no detectable emissions" within 5 days after such a discharge. The proposed standard would further require an annual test to verify the "no detectable emissions" status of each device, with records indicating the date of inspection, the equipment found to be leaking, and the date of repair.

As an alternative to the use of rupture discs and other techniques that achieve the "no detectable emissions" limit, EPA proposes to allow the venting of pressure relief devices to a control device designed and operated to achieve 95 percent efficiency. When venting a pressure relief device, the control device also reduces emission of benzene that occur during overpressure relief. EPA judges that the emission reduction lost by allowing 95 percent control of leaks (rather than the 100 percent control achieved by the "no detectable emissions" limit) is offset by the emission reduction gained by controlling the emissions due to overpressure relief. Steam-assisted and nonassisted flares designed for and operated with an exit velocity of less than 18 m/sec achieve better than 95 percent control efficiency and are potential control devices for this alternative standard. Therefore, provisions related to the use of flares are included in the proposed regulation. EPA has been studying the question of whether additional types of flares also will achieve better than 95 percent control efficiency; if so, the Agency will revise the standards accordingly.

The control technique selected as the basis of the proposed standard for light-oil sumps is a sealed cover that extends over the entire surface of the sump, coupled with the use of a gasket material applied to the rim of the sump cover. Such a sump cover would not be required to be permanently sealed because the cover may have to be removed for periodic maintenance. Eventual deterioration of the seal could result in leaks, even with proper operation and maintenance. These leaks could not reasonably be vented into a conveyance designed or constructed to capture the pollutant. Therefore, mass emissions from this source could not be measured.

The control techniques selected at BAT would allow the use of a vent on the light-oil sump cover so that excess pressure is not built up in the sump. Potential emissions from small pressure increases would be contained with the use of a water leg seal or a vent pipe equipped with a pressure relief device or a vacuum relief value. Although the vent or vent pipe would provide a conveyance for the measurement of uncontrolled emissions, emission

measurement would still be impractical due to the low, intermittent emission rate. In addition, measurement methods for determining the quantitative emission rate from the pressure relief device on a vent are not practicable because the measurement would require the bagging of each device, which is an expensive procedure.

In addition, establishing a "no detectable emissions" limit would not necessarily ensure the control of emissions from the sump. Because the emissions are dispersed over a wide area, a "no detectable emissions" limit (<500 ppm) could conceivably be met with no control device, even though the mass emissions from the sump would be greater without a cover than with a cover. For these reasons, EPA has concluded that an emission limit applicable to a light-oil sump is not feasible to prescribe or enforce, and has determined that establishment of an equipment standard is appropriate for this source.

To ensure proper operation and maintenance of the sump cover, the proposed equipment standard would require the semiannual inspection of the cover for "detectable" emissions (>500 ppm VOC) using Reference Method 21. An initial attempt at repair of any defect or leak must be made within 5 days of the date of detection. Repair of the leak or defect would be required within 15 days of the date of detection.

The possibility of establishing an emission limit applicable to naphthalene processing was also considered. A process modification requiring the collection of naphthalene in tar (or an alternative medium such as wash oil) was selected as BAT for this emission source. Implementation of the process modification would eliminate naphthalene processing and the emissions that result from the practice of separating naphthalene from the hot well of a direct-water final cooler. Consequently, a "zero" emissions limit was selected for this process. A tar-bottom final cooler system or a wash-oil final cooler system could be used to eliminate naphthalene processing. If a direct-water final cooler is modified by the addition of a mixer-settler, the proposed standard would require that emissions be contained so that they are not released to the atmosphere. This requirement could be achieved by controlling emissions with a gas blanketing system. If a gas blanketing system were used, the mixer-settler would be subject to the proposeed monitoring, reporting, and recordkeeping requirements applicable to other gas-blanketed sources.

Benzene emissions from open-ended lines occur as the result of leakage through the valve seat of a valve, which seals the open end of the line from the process fluid. The basis of the proposed standard is equipment that would enclose the open end of the line. Generally, open-ended lines are not designed to release fugitive emissions to a conveyance, and bagging of these sources for emission measurements would not be economically or technologically practicable. A "no detectable emissions" limit is not feasible to prescribe because benzene could leak through the valve seat and become trapped in the line between the open-ended valve and the cap. The trapped benzene could be emitted to the atmosphere, even though the benzene emitted to the atmosphere would be much less than the benzene emitted without the cap or enclosure. Because an emission limit was found to be infeasible to prescribe or enforec, EPA is proposing an equipment standard requiring that a cap, plug, blind, or a second valve be installed on open-ended lines.

To ensure the proper operation of the equipment, open-ended lines would also be covered by an operational standard. If a second valve is used the proposed standard would require the upstream valve to be closed first. After the upstream valve is completely closed, the downstream valve must be closed. This operational requirement is necessary to prevent trapping process fluid between the two valves, which could result in a situation equivalent to the uncontrolled open-ended valve.

As in the case of other equipment in benzene service, sampling connections are generally not designed to release fugitive emissions to a conveyance, and bagging of these emission sources would not be economically or technologically practicable. A "no detectable emissions" limit is not feasible because no available data indicate that application of any control technique would be able to comply with such a standard at all times.

Because an emission limit is considered infeasible to prescribe or enforce, an equipment standard requiring closed-purge sampling is proposed for sampling connections. Closed-purge sampling systems eliminate emissions caused by purging by either returning the purge material directly to the process or by collecting the purge in a collection system closed to the atmosphere. In-situ sampling would be exempted from these requirements.

Pumps, valves, and exhausters generally are not designed to release fugitive emissions into a conveyance. Because of the large number and diverse locations of pumps, valves, and exhausters, bagging of these sources for emission measurement would not be practicable or economical. Because these sources are expected to leak and because the control technology selected as the basis of the standard is a leak detection and repair program, a "no detectable emissions" limit is not appropriate to prescribe for these sources. EPA considers that the application of a "no detectable emissions" limit for these sources would reflect a control technology more stringent than BAT. For these reasons, a work practice standards was selected as the format for the proposed standards for these sources rather than an emission limit.

Three main factors influence the level of emission reduction that can be achieved by a leak detection and repair program—the monitoring interval, leak definition, and repair interval. Training and diligence of personnel conducting the program, repair methods attempted, and other site-specific factors may also influence the level of emission reduction achievable; however, these factors are less quantifiable than the three main factors. For each of these factors, the proposed standard includes control requirments which provide the most emission reduction without unreasonable costs or other burdens.

The monitoring interval is the frequency at which individual component monitoring is conducted. Monthly monitoring was selected as the required interval for pumps and valves, and quarterly monitoring was selected for exhausters; these intervals would provide the greatest emission reduction potential without imposing unreasonable costs or difficulties in implementing the leak detection and repair program.

The leak definition is the instrument reading observed during monitoring that would be used to determine which components have failed and need to be repaired. The best leak definition would be the one that achieved the most emission reduction at reasonable costs. The emission reduction achieved would increase as the leak definition decreased, due to the increasing number of sources that would be found leaking and, therefore, repaired. At a leak definition of 10,000 ppm organics, approximately 90 percent of benzene fugitive emissions from valves would be detected. Valves found leaking organic compounds at levels of 10,000 ppm or

greater can be brought to levels below 10,000 ppm with proper maintenance. Also, as a practical matter, most commonly available hydrocarbon detectors that are considered intrinsically safe have a maximum reading of 10,000 ppm. Leak definitions higher than 10,000 ppm could, nevertheless, be selected (and dilution probes could be used with portable detectors); however, there would be less emission reduction than with the 10,000-ppm definition and no substantial associated cost savings. Consequently, there is no basis for selecting a leak definition greater than 10,000-ppm organics. A leak definition lower than 10,000 ppm may be practicable in the sense that leaks can be repaired to levels less than 10,000 ppm. However, EPA is unable to conclude that a leak definition lower than 10,000 ppm, would provide additional emission reductions and, therefore, would be reasonable. Because the 10,000-ppm leak definition would address approximately 90 percent of the benzene fugitive emissions from valves at reasonable costs and at reasonable cost effectiveness, and because safe, available hydrocarbon detectors can read 10,000 ppm, the 10,000-ppm level was selected as the leak definition for valves. This definition is also considered appropriate for pumps and exhausters. The same portable monitor used for values would be used for these sources, and consideration of other relevant factors did not indicate that the 10,000-ppm definition should be different for pumps or exhausters.

The repair interval is the length of time allowed between the detection of a leaking source and repair of the source. As noted above, to make the overall program effective, the most practicable selection for this factor should be chosen. Thus, to provide the maximum effectiveness of the leak detection and repair program, the repair interval should require expeditious reduction of emissions but should allow the owner or operator sufficient time to maintain some degree of flexibility in overall maintenance scheduling.

The length of the repair interval would affect emission reductions that are achievable by the leak detection and repair program because leaking sources would be allowed to continue to leak for a given length of time. Repair intervals of 1, 5, 15, 30, and 45 days were evaluated. The effect on the maximum emission reductions potential is proportional to the number of days the sources is allowed to leak between detection and repair.

Some pumps, valves, and exhausters may not be repairable by simple field maintenance. They may require spare parts or removal from the process for repair. Repair intervals of 1 to 5 days could cause problems in obtaining acceptable repair, especially when removal from the process would be required. However, a 15-day interval provides the owner or operator with sufficient time for flexibility in repair scheduling and provides time for better determination of methods for isolating pieces of leaking equipment for repair. In general, a 15-day repair interval allows more efficient handling of repair tasks while maintaining an effective reduction in fugitive emissions. Thus, the repair interval selected for proposal in the leak repair program is 15 days. A repair interval of 30 or 45 days was not selected because 15 days is a more restrictive, yet feasible, selection.

However, the first attempt at repair of a leaking source should be accomplished as soon as practicable after detection of the leak, but no later than 5 days after discovery. Most repairs can be done quickly, and 5 days should provide sufficient time to schedule maintence and repair a leaking source. Attempting to repair the leak within 5 days will help to identify leaks that would require additional efforts so they could be repaired within the 15-day repair interval.

Delay of repair would be allowed for sources that could not be repaired without a process unit shutdown. These leaks would have to be repaired at the next unit shutdown unless the shutdown is unscheduled and lasts less than 24 hours. Delay of repair is not expected for most situations, however, because sources such as exhausters and critically situated pumps are commonly spared at by-product recovery plants. Therefore, they could be repaired without a process unit shutdown.

Monthly monitoring of valves to detect leaks is reasonable. However, some valves may leak less frequently than others. One indicator that might predict which valves leak is valve leak history. That is, once a valve leaks, then it may be more likely to leak again than a valve that has not leaked. The Administrator decided to implement the monthly monitoring requirement by focusing on the valves that tend to leak more often. One approach is to allow an alternative monitoring period for valves found to leak less frequently than others. The Administrator is proposing that leak detection and repair work practices include monthly monitoring for valves unless they are found not to leak for 2 successive months. If a valve is found not to leak for 2 successive months, the owner or operator may elect to monitor during the first month of the next quarter and quarterly thereafter until a leak is detected. Whenever a leak is detected, the valve would be monitored once a month until the valve did not leak for 2 successive months.

Some valves are difficult to monitor because access to them is restricted. Therefore, EPA is proposing an annual leak detection and repair program for valves in existing process units that are difficult to monitor. Valves that are difficult to monitor are defined as valves that would require elevating the monitoring personnel more than 2 meters above any readily available support surface. This means that ladders must be used, if needed, to elevate monitoring personnel.

In addition to valves that are difficult to monitor, some valves are unsafe to monitor because monitoring personnel would be subject to imminent hazards. The proposed standards would allow an owner or operator with valves that are unsafe to monitor to develop a special leak detection and repair program. These special programs would conform with the routine monitoring requirements of the proposed standards as much as possible but would allow deviation from a routine monitoring so that monitoring would not occur under unsafe conditions. Valves that are unsafe to monitor are defined as those valves that could, as demonstrated by the owner or operator, expose monitoring personnel to imminent danger, e.g., hazards from temperature, pressure, or explosive process conditions. There should be few, if any, unsafe-to-monitor valves in benzene service in coke by-product recovery plants.

Pressure relief devices in liquid service and flanges and other connectors in all services would be excluded from the proposed routine leak detection and repair requirements on the basis of data from EPA testing. Screening studies done by EPA in coke by-product recovery plants indicated very low emission rates for individual flanges, which would result in only a small contribution to overall emissions. Testing of pressure relief devices in liquid service in petroleum refineries exhibited very low emission rates; similar results would be expected at coke by-product recovery plants. Applying routine monitoring requirements to these pieces of equipment would result in an exorbitant cost per megagram of emission reduction. However, if leaks are detected from these equipment, the

same allowable repair interval that applies to pumps, valves, and exhausters would apply.

The proposed regulation would also exclude equipment operating under a vacuum, because leaks to the atmosphere would not occur while the equipment is operating at subatmospheric internal pressures.

Alternative Standards for Valves. The emission reduction and annualized cost of the proposed leak detection and repair program depends in part on the number of valves that are found leaking during inspections. If very few leaks are detected in a plant, then the amount of benzene that could be reduced by the proposed program is much smaller than the amount that could be reduced in a plant that had more leaks. In contrast, the annualized cost of the program would be larger in a plant that had fewer leaks than in a plant that had more leaks because the annualized cost includes a recovery credit based on the amount of benzene recovered by the program. Therefore, the cost efectiveness of the proposed leak detection and repair program varies with the number of valves that leak within a plant.

There is no precise breakpoint in the emission reduction and annualized cost relationship as the percentage of leaking valves decreases. However, based on an analysis of coke by-product recovery plants, the Administrator has judged that the emission reduction and annualized cost relationship is unreasonable for plants having an average of less than 1 percent of valves leaking.

Based on this conclusion, the Administrator decided to propose alternative standards based on allowable percentage of valves leaking. The allowable percentage of valves leaking was chosen to include the variability inherent in any system; e.g., leak detection of valves. The variability in leak detection of valves can be characterized as as a binomial distribution around the average number or percentage of valves leaking. Inclusion of the variability in leak detection of valves is accomplished by straightforward statistical techniques based on the binomial distribution. The analysis of by-product plants showed that an alternative standard of 2 percent of valves leaking, to be achieved at any time, would provide an owner or operator a reasonably low risk that a percentage of valves leaking greater than 2 percent would be determined when the average of 1 percent was actually being achieved.

Based on these considerations, the Administrator is proposing two alternative standards that would exempt sources from the required (monthly/quarterly) leak detection and repair program if the sources achieve less than 2 percent leaking valves in benzene service. Owners or operators of affected facilities may identify and elect to achieve either of the alternative standards to allow tailoring of fugitive emissions control programs to their own operations. An owner or operator would report which alternative standard he or she had identified and elected to achieve.

The first alternative standard would limit the maximum percentage of valves in benzene service leaking to 2 percent. This type of standard would provide the flexibility of a performance standard. The first alternative standard could be achieved by the most efficient and practical methods for a particular plant. Choosing this alternative standard would allow for the possibility of different leak detection and repair programs and for the substitution of engineering controls at the discretion of the owner or operator. This standard would also eliminate a large part of the recordkeeping and reporting associated with the routine leak detection and repair program for valves.

An industry-wide allowable leak percent that could necessarily be achieved at all facilities is not possible for valves because of the variability in valve leak frequency and variability in the ability of a leak detection and repair program to reduce these leaks among all plants within the industry. However, this alternative standard would allow any plant the option of complying with an allowable percentage of valves leaking. This alternative standard would require a minimum of one performance test per year. Additional performance tests could be requested by EPA. If the results of a performance test showed a percentage of valves leaking higher than 2 percent, the process unit would not be in compliance with the standards.

The second alternative standard would allow the use of skip-period leak detection. Under skip-period leak detection, an owner or operator could skip from routine leak detection to less frequent leak detection after completing a number of successful leak detections. This skip-period leak detection program would require that the average performance level of 2 percent be achieved on a continuous basis with a reasonable degree of certainty. A plant would choose one of two skip-period leak detection programs and then implement that program. The first skip-period leak detection program could be used when fewer than 2 percent of the valves had been leaking for two consecutive quarterly leak detection periods. The first skip-period leak detection program would allow an owner or operator to skip every other quarterly leak detection period; that, is, leak detection can be performed semiannually. Under the second skip-period leak detection program, if fewer than 2 percent of the valves had been leaking for five consecutive quarterly leak detection periods, the owner or operator may skip three quarterly leak detection periods; that is, leak detection can be performed annually. When more than 2 percent of valves are found to leak, the routine leak detection and repair program would be required to be resumed.

Alternative Means of Emission Limitation

Under the provisions of section 112(e) of the Clean Air Act, if the Administrator establishes work practices, equipment, design or operational standards, then the Administrator must allow the use of alternative means of emission limitations if they achieve a reduction in air pollutants equivalent to that achieved under requirements of a standard. Sufficient data would be required to show equivalency, and a public hearing would be required.

Any peron could request alternatives for specific requirements, such as the proposed equipment and the proposed leak detection and repair program. Under the proposed regulations, that person would be responsible for collecting and verifying the test data used to demonstrate that the alternative control techniques would be equivalent to the control techniques required by the standard. This information would then be submitted to EPA. If, in the Administrator's judgment, the alternative means of emission limitation would achieve a reduction in emissions at least equivalent to the reduction achieved under the design, equipment, work practice or operational standard, the Administrator would publish in the **Federal Register**, after notice and an opportunity for a hearing, a notice permitting the use of the alternative means for purposes of compliance with the standard.

To judge if an alternative control technique achieves an emissions reduction equivalent to gas blanketing, the Administrator would consider the control efficiency of gas blanketing as 98 percent for all sources except the tar decanter. For the tar decanter, the efficiency of gas blanketing would be considered as 95 percent. The lower efficiency is due to the opening that

must be on the tar decanter to allow clearance for the sludge conveyor.

Any control option more stringent than the option selected as the basis of the proposed standard would be at least equivalent to the requirements included in the proposed standard and would be allowed by EPA. EPA has already determined the equivalency of these control options and incorporated them into the standard, along with specified conditions for their use. Therefore, the owner or operator would not need to apply to EPA for their use as an alternative control option.

For example, the proposed standards would not require "leakless" equipment, such as sealed bellows and diaphragm valves and canned and diaphragm pumps. However, use of "leakless" equipment is clearly equivalent to the proposed standards for pumps, valves, and exhausters, and the proposed standards would allow the use of such equipment as an alternative to the required practices.

"Leakless"' equipment would be required to operate with "no detectable emissions" at all times when it is in service. "No detectable emissions" means an instrument reading of 500 ppm or less of organic compounds above background, as measured by Reference Method 21. The proposed standards require that its "leakless" status be verified annually and at the request of the Administrator, using Reference Method 21.

In addition, other types of equipment can achieve emission reduction at least equivalent to that achieved by a monthly leak detection and repair program for pumps and a quarterly one for exhausters. For pumps, this equipment includes dual mechanical seal systems that use a barrier fluid between the two seals. For exhausters, this equipment includes a seal with a barrier fluid system. If the barrier fluid is maintained at a pressure greater than the pump or exhauster stuffing box pressure, any leakage would be from the barrier fluid to the working fluid; therefore, no working fluid would be emitted to the atmosphere. If the stuffing box pressure is greater than the barrier fluid pressure, the barrier fluid collects the leakage from the inner seal; the working fluid collected by the barrier fluid is controlled by either: (1) Connecting the barrier fluid degassing system to a control device, or (2) returning the barrier fluid to the process stream. Because these seal systems which meet these specifications are at least equivalent to a monthly leak detection and repair program for pumps and quarterly leak detection and repair program for exhausters, they have been exempted from the monitoring provisions of the proposed standards.

Sections 112(e)(1) and 302(k) of the Clean Air Act require that when equipment standards are established, requirements must also be established to ensure the proper operation and maintenance of the equipment. A pressure or level indicator on the barrier fluid system would reveal any catastrophic failure of the inner or outer seal or of the barrier fluid system. This indicator would be monitored on a daily basis or equipped with an audible alarm to signal a failure of the system. The point at which the alarm signals a failure of the seal system would be determined for each seal system based on design considerations and operating experience. Thus, these requirements are proposed to ensure the proper operation and maintenance of the seal system.

In many cases, the seal area of a pump or exhauster could be completely enclosed, and this enclosed area could be connected to a control device designed and operated to achieve 95-percent control. Some owners or operators may decide that this approach is preferable to leak detection and repair. Enclosing the seal area and venting the captured emissions to a 95-percent control device is a reasonable alternative because this system would be at least as effective as the leak detection and repair programs for pumps and exhausters. Therefore, the Administrator is proposing to allow pumps and exhausters equipped with enclosed seal areas to be connected to a 95-percent control device.

Steam-assisted and nonassisted flares designed for and operated with an exit velocity of less than 18 m/sec achieve better than 95 percent control efficiency and are potential control devices for this alternative standard. Therefore, provisions related to the use of flares are included in the proposed regulation. EPA has been studying the question of whether additional types of flares also will achieve better than 95 percent control efficiency; if so, the Agency will revise the standards accordingly.

Selection of Test Method

Reference Method 21 (40 CFR Part 60, Appendix A) was selected as a method for measuring leaks from sources subject to the leak detection and repair requirements (including gas-blanketed sources) and for sources subject to "no detectable emissions" limits. The selection of this test method is fully discussed in the proposed new source performance standards for the control of VOC fugitive emissions in the synthetic organic chemicals manufacturing industry (46 FR 1136, January 5, 1981) and proposed technical support document (EPA–450/3–80–033a). The method was promulgated on August 18, 1983 (48 FR 37598).

Reference Method 21 specifies the use of a portable detector to measure the concentration of organic vapors at a source to yield a qualitative or semiquantitative indication of the emission rate from the source. The test procedure does not detect benzene specifically; instead, the organic compound concentration is measured.

Tests have indicated that local conditions cause variations in concentration readings at points removed from the surface of the interface on the component where leaking occurs. Therefore, Reference Method 21 would require the concentration to be measured at the interface surface.

The monitoring instrument would be calibrated before each monitoring survey with methane or n-hexane. Thus, the required calibration gases would be a zero gas (air <10 ppmv volatile organic compounds) and an air mixture (approximately 10,000 ppm methane or n-hexane). If cylinder calibration gas mixtures were used, they would have to be analyzed and certified by the manufacturer to within ± 2 percent accuracy. Calibration gases prepared by the user according to an accepted gaseous standards preparation procedure would also have to be accurate to within ± 2 percent. The monitoring instrument would be subjected to other performance requirements prior to being placed in service for the first time. The instrument would be subjected to the performance criteria every 6 months and after any modification or replacement of the instrument detector.

The proposed standard also requires the ASTM Method D2267–68 ("Aromatics in Light Naphthas in Aviation Gasoline by Gas Chromatography") be used to determine the percentage of benzene in the process fluid within a fugitive emission source. This determination would be made only when the exact concentration of benzene is uncertain.

If a flare is used as a control device, Reference Method 22 of 40 CFR Part 60 shall be used to determine compliance with the "no visible emissions" requirement. The proposed standard specifies the use of Reference Method 2, 2A, or 2C of 40 CFR Part 60 to determine the volumetric flow rate of the flare. It also specifies the use of Reference Method 18 of 40 CFR Part 60 and ASTM Method D2504–67 to determine the

concentrations of the gas components in calculating the net heating value of the gas being flared. In addition, the heats of combustion of the gas may be determined using ASTS Method D2382-76, if published values are not available or cannot be calculated.

The ASTM Methods referenced above will be approved for incorporation by reference in 40 CFR 61.18 on the date of promulgation of the standard for benzene equipment leaks [fugitive emission sources] that was proposed on January 5, 1981 (46 FR 1165). Section 61.18 of 40 CFR Part 61 will be amended to include citations to the paragraphs specifying these ASTM Methods in this coke by-product plant standard when this standard is promulgated. The ASTM Methods are available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, N.W., Washington, D.C. 20408 and the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 27711. They are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or the University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

Selection of Reporting and Recordkeeping Requirements

Recordkeeping would be required to document compliance with the proposed regulation; review of these records would provide information for plant and enforcement personnel to assess implementation of the requirements. Compliance would be determined by inspection and review of this recorded information.

For sources subject to equipment and design standards, such as gas-blanketed process units, the owner or operator must record and keep in a readily accessible location a description of the control systems to be used to achieve compliance (i.e., schematics), the installation date, and a description of any changes made after installation. This would also apply to equipment used to achieve compliance with the "zero" emissions limit for naphthalene processing. A record of design and operating specifications is also required for control devices used to achieve compliance.

The following records must be maintained for a least 2 years. For gas-blanketed sources, light-oil sumps, and storage tanks containing light-oil, benzene mixtures, benzene, or excess ammonia-liquor, records of the semiannual inspections must be maintained, including the inspection date, the name of the inspector, a brief description of the leaks detected and repairs made, and the dates of repair attempts for each leak. The owner or operator must also maintain records of each annual maintenance inspection. These records must include a description of the abnormality, the repair made, and the repair dates. The proposed regulation also requires a record of any system blockage [or malfunction], with a brief description of the incident, the cause, the repairs made, and the repair dates.

For control devices, records must be maintained that indicate the dates the device was not operating as designed, the dates and description of any maintenance or repair of the device, and monitored parameters. If a wash-oil scrubber is used, the proposed regulation requires that records be kept of the wash-oil flow rate, the temperature of the gases exiting the scrubber, and the pressure at the scrubber spray nozzle. These records also must be maintained for at least 2 years.

Records of specific information pertaining to the leak detection and repair also would be required. Each source found to be leaking during the first month of a quarter would be identified with readily visible weatherproof identification bearing an identification (ID) number. The identification could be removed after the source had been repaired and monitored for leaks and repaired as necessary for the next 2 successive months. A log would be maintained for information pertaining to the leaking sources. The log would contain the instrument and operator identification numbers, the leaking source identification number, the date of detection of the leaking source, the date of the first attempt to repair the leaking source, repair methods applied in the first attempt to repair the source, and the date of final repair. The log would be kept for at least 2 years following the survey.

Reporting requirements are also included for enforcement personnel to review and assess the compliance status of affected sources. In the intital compliance report required by 40 CFR 61.10, the owner or operator must submit a statement notifying the Administrator that the requirements of the standard are being implemented, along with the other information required under § 61.10. If a waiver of compliance is granted under § 61.11, the statement would be submitted on a date scheduled by the Administrator. The statement also would describe the type of source and the method of compliance being used. For pieces of equipment in benzene service, the statement would include the percent by weight benzene in the fluid and the process fluid state in the equipment (i.e., gas/vapor or liquid).

Semiannual reports starting 6 months after submission of the initial compliance report would be required. For gas-blanketed sources, light oil sumps, and storage tanks containing light oil, benzene mixtures, benzene, or excesss ammonia-liquor, the report must contain a brief description of any visible defect in the source or ductwork, the number of leaks detected and repaired, and the repair dates. A brief description of any system abnormalities found during the annual maintenance inspection, the repairs made, and the repair dates also would be required, as would a brief description of any system blockage or malfunction incidents, the repairs made, and the repair dates.

The semiannual report also would include information regarding the use of control devices. Required information would include the date and time of any occurrence when the monitored parameters exceed or drop below the parameter levels determined in the design specifications. If a wash-oil scrubber is used, the report must include the date and time of any occurrence when the wash-oil flow rate or the pressure at the scrubber spray nozzle falls below the parameter levels determined in the design specifications or the temperature of the gases exiting the scrubber exceeds the design specification temperature.

For pieces of equipment in benzene service, the semiannual report would include the process unit identification for the equipment, in addition to information regarding the number of pumps, valves, and exhausters for which leaks were detected during each month of the reporting period; the number of pumps, valves, and exhausters for which leaks were not repaired; an explanation of any delay of repairs; and dates of any process unit shutdowns that occurred during the reporting period.

Annual performance tests are required to verify the status of sources subject to "no detectable emissions" limits and for valves subject to the alternative standard. The proposed regulation requires the owner or operator to record the results of each performance test and to include this information in the semiannual report for that reporting period.

Each semiannual report also would include a statement signed by the owner or operator stating whether all provisions of the regulation has been fulfilled during the reporting period.

Alternative Approach for Selecting Emission Control Levels

Historically, EPA's approach to selecting control levels for emission sources has been a two-step process that included: (1) the selection of the best available technology (BAT) as the minimum control level, and (2) an evaluation of the incremental risk reductions and costs of more stringent controls. This approach was first outlined by EPA in the proposed Airborne Carcinogen Policy in 1979 (40 FR 58642) and has been generally followed by EPA since that time.

In selecting BAT for specific emission sources of coke by-product plants, EPA considered the cost per megagram of emission reduction for available control techniques. When more than one control option was available, EPA examined the incremental cost per megagram of moving to the more stringent control option. If the incremental cost in comparison to the incremental emission reduction was judged as unreasonable, the next lower increment was examined until a control technique with a reasonable cost in comparison to the emission reduction was available. In all cases, EPA selected as BAT the control option that provided the most emission reduction and yet has a reasonable average and incremental cost per megagram of emission reduction.

In proposing this approach, EPA recognizes that it usually gives somewhat limited and indirect weight to information on exposure and health risks in determining BAT and more direct weight to the amount of emissions reduced. For example, in determining BAT for emission sources, the Agency relies on estimates of the total emissions reduced and on estimates of the average and incremental cost of reducing those emissions. However, the Agency recognizes that emission estimates alone can sometimes be poor measures of public health risks because they do not account for the carcinogenic potency or exposure potential of hazardous air pollutant emissions.

In order to more directly consider health risks, the Agency intends to change the approach for selecting the appropriate control levels in the final standard for coke by-product plants. The new approach the Agency would use in the final standard would combine the current two-step process into one step. In selecting the appropriate control technique, EPA would consider in one step the before- and after-control risks, the health risk reduction, and the economic and societal costs of achieving those risk reductions. The major change in this approach would be the greater consideration of public health risks over emission estimates in selecting controls.

EPA solicits comments on this intended approach.

Paperwork Reduction Act

An analysis of the burden associated with the reporting and recordkeeping requirements has been made. During the first 3 years of this regulation, the average annual burden of the reporting and recordkeeping requirements for the 42 existing coke by-product recovery plants would be about 3.3 person-years. The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Office for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider the potential impacts of proposed regulations on small "entities." The guidelines for conducting a regulatory flexibility analysis define a small business as "any business concern which is independently owned and operated and not dominant in its field as defined by the Small Business Administration Regulations under Section 3 of the Small Business Act." For the purposes of this proposed regulation, small "entities" are considered to be small furnace and foundary coke firms that employ less than 1,000 workers.

A regulatory flexibility analysis indentifies up to six small foundary coke plants that could be affected by the proposed regulation. Present guidelines for the analysis require an estimate of the degree of economic impact on the firms in terms of: (1) the percent increase in the average total cost of producing coke as a result of the proposed standard, and (2) the total annual cost of control as a percentage of the firm's revenue. If the percent increase in the average total cost of producing coke is estimated as 5 percent or more, the impact of the proposed regulation is to be considered significant. If the total annual cost of control as a percentage of the firm's annual revenue is 10 percent greater for small firms than for large firms, the small firms are to be considered adversely impacted by the proposed standard.

None of the firms identified as small firms were found to have an average coke production cost increase greater than 5 percent. In addition, none of these plants exceeded the second criterion. In summary, no small plants would be adversely affected by the proposed standard. A further discussion of the regulatory flexibility analysis is provided in Chapter 9 of the background information document.

Public Hearing

A public hearing will be held to discuss the proposed standard for coke by-product recovery plants in accordance with sections 112(b)(1)(B) and 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations on the proposed standards for benzene emissions from coke by-product recovery plants should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 75 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket Number A–79–16.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see **ADDRESSES** section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review except for interagency review materials [307(d)(7)(A)]

Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

Under Executive Order 12291, EPA is required to judge if a regulation is a "major rule" and, therefore, subject to certain requirements of the Executive

Order. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Executive Order as grounds for finding a regulation to be a "major rule." A savings in industry-wide annualized costs, resulting from benzene recovery credits, would be achieved by the proposed standard. For furnace coke producers, the impacts of the proposed standard would result in only a negligible price increase; the price of foundry coke is expected to increase by less than 1 percent. The Agency has also concluded that this rule is not "major" under any of the criteria established in the Executive Order. Therefore, the Agency has concluded that the proposed regulation is not a "major rule" under Executive Order 12291.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for inspection in Docket Number A-79-16, Central Docket Section, at the address given in the **ADDRESSES** section of this preamble.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride

Dated: May 23, 1984.

William D. Ruckelshaus,

Administrator.

PART 61—[AMENDED]

It is proposed that Part 61 of Chapter I, Title 40, of the Code of Federal Regulations be amended by adding a new Subpart L, as follows:

Subpart L—National Emission Standard for Benzene Emissions From Coke By-Product Recovery Plants

Sec.

61.130 Applicability and designation of sources.
61.131 Definitions.
61.132–1 Standards: General.
61.132–2 Standards: Process vessels, tar storage tanks, and tar-intercepting sumps.
61.132–3 Standards: Light-oil sumps.
61.132–4 Standards: Light-oil, benzene, and excess ammonia-liquor storage tanks.
61.132–5 Standards: Naphthalene processing.
61.132–6 Standards: Pumps.
61.132–7 Standards: Exhausters.
61.132–8 Standards: Pressure relief devices in gas/vapor service.
61.132–9 Standards: Sampling connection systems.
61.132–10 Standards: Open-ended valves or lines.
61.132–11 Standards: Valves.
61.132–12 Standards: Pressure relief devices in liquid service and flanges and other connectors.
61.132–13 Standards: Delay of repair for equipment leaks.
61.132–14 Standards: Closed vent systems and control devices for equipment leaks of benzene.
61.133–1 Alternative standards for valves in benzene service—allowable percentage of valves leaking.
61.133–2 Alternative standards for valves in benzene service—skip period leak detection and repair.
61.134 Alternative means of emission limitation.
61.135 Test methods and procedures.
61.136 Recordkeeping requirements.
61.137 Reporting requirements.

Authority: Secs. 112 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7412 and 7601(a)), and additional authority as noted below.

Subpart L—National Emission Standard for Benzene Emissions From Coke By-Product Recovery Plants

§ 61.130 Applicability and designation of sources.

(a)(1) The provisions of this subpart apply to each of the following sources in a coke by-product recovery plant: naphthalene processing and direct-water final-cooler cooling systems; tar decanters; tar-dwatering tanks; tar-intercepting sumps; flushing-liquor circulation tanks; light-oil sumps; light-oil condensers; light-oil decanters; wash-oil decanters; wash-oil circulation tanks; and each storage tank containing tar, light-oil, benzene, or excess ammonia-liquor.

(2) The provisions of this subpart also apply to each of the following sources in a coke by-product recovery plant that are intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges and other connectors, and control devices or systems required by this subpart.

§ 61.131 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in Subpart A of Part 61, and the following terms shall have the specific meanings given them:

"Benzene storage tank" means any tank, reservoir, or other type container used to collect or store refined benzene.

"Closed-vent system" means a system that is not open to atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

"Coke by-product recovery plant" means any facility designed and operated for the separation and recovery of coal tar derivatives (by-products) evolved from coal during the coking process of a coke oven battery.

"Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipe lines or a pipe line and a piece of process equipment.

"Control device" means an enclosed combustion device, vapor recovery system, or flare.

"Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

"Equipment" means each pump, valve, exhauster, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in benzene service, and any devices or systems required by § 61.132–14.

"Excess ammonia-liquor storage tank" means any tank, reservoir, or other type container used to collect or store a flushing-liquor solution prior to ammonia or phenol recovery.

"First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to atmosphere, using best practices.

"Flushing-liquor circulation tank" means any vessel that functions to store or contain flushing liquor that is separated from the tar in the tar decanter and is recirculated as the cooled liquor to the gas collection system.

"In benzene service" means a piece of equipment, other than an exhauster, that either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight or any exhauster that either contains or contacts a fluid (liquid or gas) at least 1 percent benzene by weight as determined by the provisions of § 61.135(d). The provisions of § 61.135(d) also specify how to determine that a piece of equipment is not in benzene service.

"In gas/vapor service" means that a piece of equipment contains process fluid that is in the gaseous state at operating conditions.

"In vacuum service" means that a process unit (including associated equipment) is operating at an internal pressure that is at least 5 kilopascals (kPa) below ambient pressure.

"In VOC service" means, for the purposes of this subpart, that: (1) The piece of equipment contains or contacts a process fluid that is at least 10 percent VOC by weight; and (2) the piece of equipment is not in light liquid service as defined in 40 CFR 60.481. See 40 CFR 60.2 for the definition of volatile organic compound or "VOC" and 40 CFR 60.485(d) to determine whether a piece of equipment is not in VOC service.

"In-situ sampling systems" means nonextractive samplers or in-line samplers.

"Light-oil condenser" means any vessel, tank, or other type device in the light-oil recovery operation that functions to condense benzene-containing vapors.

"Light-oil decanter" means any vessel, tank, or other type device in the light-oil recovery operation that functions to separate light oil from the coke oven gas process stream. A light-oil decanter may also be known as a light-oil separator.

"Light-oil storage tank" means any vessel, tank, reservoir, or other type of container used to collect or store crude light oil or light-oil fractions such as benzene-toluene-xylene (BTX) mixtures.

"Light-oil sump" means any tank, pit, enclosure, or slop tank in light-oil recovery operations that functions as a wastewater separation device to recover hydrocarbon liquids from the surface of the water.

"Mixer-settler" means a tank containing tar that is inserted into the final cooling process of a direct-water final cooler system that serves to remove naphthalene from the direct-contact water.

"Naphthalene processing" means any operations required to recover naphthalene from a direct-water final cooler, including the separation, refining, drying, handling, and transporting of crude or refined naphthalene.

"Open-ended valve or line" means any valve, except pressure relief devices, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

"Pressure release" means the emission of materials resulting from system pressure being greater than set pressure of the pressure relief device.

"Process unit" means each group of process vessels and equipment assembled to produce, as intermediate or final products, any by-product evolved from coal in a coke by-product recovery plant (e.g., the light-oil plant). A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient product storage facilities.

"Process unit shutdown" means a work practice or operational procedure that stops production from a process unit or part of a process unit. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

"Process vessel" means each tar decanter, flushing-liquor circulation tank, light-oil condenser, light-oil decanter, wash-oil decanter, or wash-oil circulation tank.

"Quarter" means a 3-month period, the first quarter concludes on the last day of the last full month during the 180 days following startup for new sources; the first quarter concludes on the last day of the last full month during the 180 days after (date of publication of final rule in **Federal Register**) for existing sources.

"Repaired" means that a source is adjusted or otherwise altered in order to eliminate a leak as indicated by one of the following: an instrument reading of 10,000 ppm or greater, instrument reading of 500 ppm or greater above a background concentration, indication of liquids dripping, or indication by a sensor that a seal system or barrier fluid system has failed.

"Semiannual" means a 6-month period; the first semiannual period concludes on the last day of the last full month during the 180 days following initial startup for new sources; and the first semiannual period concludes on the last day of the last full month during the 180 days after (date of publication of final rule in **Federal Register**) for existing sources.

"Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

"Tar decanter" means any vessel, tank, or other type container that functions to separate heavy tar and sludge from flushing liquor by means of gravity, heat, or chemical emulsion breakers. A tar decanter may also be known as a flusing-liquor decanter.

"Tar storage tank" means any vessel, tank, reservoir, or other type container used to collect or store crude tar or tar-entrained maphthalene except for tar products obtained by distillation, such as coal tar pitch, creosotes, or carbolic oil. This definition also includes any vessel, tank, reservoir, or other type container used to reduce the water content of the tar by means of heat, residence time, chemical emulsion breakers, or centrifugal separation. A tar storage tank may also be known as a tar-dewatering tank.

"Tar-intercepting sump" means any tank, pit, or enclosure that serves to separate light tars and aqueous condensate received from the primary cooler. A tar-intercepting sump may also be known as a primary-cooler decanter.

"Wash-oil circulation tank" means any vessel that functions to hold the wash oil used in light oil recovery operations or the wash oil used in the wash-oil final cooler.

"Wash-oil decanter" means any vessel that functions to separate, by gravity, the condensed water from the wash oil received from a wash-oil final cooler or from a light-oil scrubber.

§ 61.132-1 Standards: General.

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of § 61.132 for each new and existing source, except as provided in § 61.133 and § 61.134.

(b) Compliance with this subpart will be determined by review of records, review of performance test results, and inspection using the methods and procedures specified in § 61.135.

(c)(1) An owner or operator may request permission to use an alternative means of emission limitation to meet the requirements of §§ 61.132-2, 61.132-3, 61.132-6, 61.132-7, 61.132-9, 61.132-10, 61.132-11, 61.132-12, 61.132-13, and 61.132-14. Permission to use an alternative means of emission limitation may be requested as specified in § 61.134.

(2) If the Administrator permits the use of an alternative means of emission limitation to meet the requirements of §§ 61.132-2, 61.132-3, 61.132-6, 61.132-7, 61.132-9, 61.132-10, 61.132-11, 61.132-12, 61.132-13, or 61.132-14, an owner or operator shall comply with the conditions of that permission.

(d) Each piece of equipment in benzene service to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment in benzene service.

(e) Equipment that is in vacuum service is excluded from the requirements of this subpart if it is identified as required in § 61.136(h)(5).

(f) At all times, owners and operators shall, to the extent practicable, maintain and operate any source including associated air pollution control equipment, according to good air pollution control practice for minimizing emissions. Determining whether

acceptable operating and maintenance procedures are used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

§ 61.132-2 Standards: Process vessels, tar storage tanks, and tar intercepting sumps.

(a)(1) Each owner or operator shall enclose and seal all openings on each process vessel, tar storage tank, and tar intercepting sump.

(2) The owner or operator shall duct gases from each source to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process where the benzene in the gas will be recovered or destroyed. This control system shall be designed and operated for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified in § 61.135(c). This system can be designed as a closed, positive-pressure, gas blanketing system.

(i) Except, the owner or operator may elect to install, operate, and maintain a pressure relief device, vacuum relief device, an access hatch, and a sampling port on each source. Each access hatch and sampling port must be equipped with a gasket and a cover, seal, or lid that must be kept in a closed position at all times, unless in actual use, and

(ii) The owner or operator may elect to leave open to the atmosphere the portion of the liquid surface in each tar decanter necessary to permit operation of a sludge conveyor. If the owner or operator elects to maintain an opening on part of the liquid surface of the decanter,the owner or operator shall install, operate, and maintain a water seal on the tar decanter roof near the sludge discharge chute to ensure enclosure of the major portion of the liquid surface not necessary for the operation of the sludge conveyor.

(b) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this section, the owner or operator shall monitor semiannually the connections and seals on each control system to determine if it is operating with no detectable emissions, using Reference Method 21 (40 CFR Part 60, Appendix A) and procedures specified under § 61.135(c) of this subpart. The owner or operator shall also conduct semiannually a visual inspection of each source (including sealing materials) and the ductwork of the control system for evidence of visible defects such as gaps or tears.

(1) If an instrument reading indicates an organic chemical concentration more than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

(c) Following the installation of any control system used to meet the requirements of paragraph (a) of this section, the owner or operator shall conduct a maintenance inspection of the control system on an annual basis for evidence of system abnormalities, such as blocked or plugged lines, sticking valves, plugged condensate traps, and other maintenance defects that could result in abnormal system operation. The owner or operator shall make a first attempt at repair within 5 days, with repair within 15 days of detection. If a system blockage occurs at any time, the owner or operator shall conduct an inspection and perform any necessary repairs immediately upon detection.

§ 61.132-3 Standards: Light-oil sumps.

(a) Each owner or operator of a light-oil sump shall enclose and seal the liquid surface in the sump to form a closed system to contain the emissions.

(1) Except, the owner or operator may elect to install, operate, and maintain a vent on the light-oil sump cover. Each vent pipe must be equipped with a water leg sea, a pressure relief device, or vaccum relief device; and

(2) The owner or operator may elect to install, operate, and maintain an access hatch on each sump cover. Each access hatch must be equipped with a gasket and a cover, seal, or lid that must be kept in a closed position at all times, unless in actual use.

(3) The sump cover may be removed for periodic maintenance but must be replaced (with seal) at completion of the maintenance operation.

(b) The venting of steam or other gases from the by-product process to the light-oil sump is not permitted.

(c) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this section, the owner or operator shall monitor semiannually the connections and seals on each control system to determine if it is operating with no detectable emissions, using Reference Method 21 (40 CFR Part 60, Appendix A) and the procedures specified under § 61.135(c) of this subpart. The owner or operator shall also conduct on a semiannual basis a visual inspection of each source (including sealing materials) and the ductwork of the control system for evidence of visible defects such as gaps or tears.

(1) If an instrument reading indicates an organic chemical concentration more than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable , but not later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

§ 61.132-4 Standards: Light-oil, benzene, and excess ammonia-liquor storage tanks.

(a)(1) Each storage tank containing light-oil benzene, or excess ammonia-liquor shalll be equipped with a control device designed and operated to achieve a 90-percent benzene control efficiency.

(2) Each owner or operator shall enclose and seal all openings on each tank; the gases from each tank shall be ducted to the control device used to achieve compliance with paragraph (a)(1) of this section.

(3) The owner or operator may elect to install, operate, and maintain a pressure relief device, vacuum relief device, an access hatch, and a sampling port on each tank. Each access hatch and sampling port must be equipped with a gasket and a cover, seal, or lid that must be kept in a closed position at all times, unless in actual use.

(b) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this section, the owner or operator shall monitor semiannually the connections and seals on each tank to determine if the control system is operating with no detectable emissions, using Reference Method 21 (40 CFR Part 60, Appendix A) and procedures specified under § 61.135(c) of this subpart. The owner or operator shall also conduct semiannually a visual inspection of each tank (including sealing meterials) and the ductwork to the control device for evidence of visible defects such as gaps or tears.

(1) If an instrument reading indicates an organic chemical concentration more

than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

(c) Following the installation of any control device (or control system) used to meet the requirements of paragraph (a) of this section, the owner or operator shall conduct a maintenance inspection of the connections and seals on each tank and ductwork to the control device on an annual basis for evidence of system abnormalities, such as blocked or plugged lines, sticking valves, plugged condensate traps, and other maintenance defects that could result in abnormal system operation. The owner or operator shall make a first attempt at repair within 5 days, with repair within 15 days of detection. If a system blockage occurs at any time, the owner or operator shall conduct an inspection and perform any necessary repairs immediately upon detection.

(d)(1) The owner or operator shall monitor parameters that indicate proper operation of the control device to ensure that the device is operated and maintained in conformance with the design. The selection of monitoring parameters is subject to approval by the Administrator.

(2) If a wash-oil scrubber is used as the control device, the owner or operator shall install, operate calibrate, and maintain a device to monitor and record the wash-oil flow rate, the temperature of the gases exiting the scrubber, and the pressure of the wash oil at the scrubber spray nozzle.

(e) The ducting of gases (e.g., coke oven gas, natural gas or nitrogen used as a blanketing agent) from a storage tank to the gas collection system, gas distribution system, or another enclosed point in the by-product recovery process where the benzene in the gas will be recovered or destroyed is permitted for compliance with the standard specified in paragraph (a) of this section.

(f) An owner or operator ducting gases from a tank in the manner described in paragraph (e) of this section shall comply with all requirements specified in § 61.132–2, including leak detection and repair provisions.

(g) At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any source, including associated air pollution control equipment, according to good air pollution control practice for minimizing emissions. Determining whether acceptable operating and maintainace procedures are used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

§ 61.132–5 Naphthalene processing.

(a) No ("zero") emissions are allowed from naphthalene processing.

(b) The emission limit specified in paragraph (a) of this section is not applicable if a mixer-settler is used to separate naphthalene from the water of a direct-water final cooler by tar or another organic liquid.

(c) If a mixer-settler is used to separate naphthalene from the water of a direct-water final cooler, the mixer-settler is subject to all requirements specified in § 61.132–2 for process vessels, including leak detection and repair provisions.

§ 61.132–6 Standards: Pumps.

(a)(1) Each pump shall be monitored monthly to detect leaks by the methods specified in § 61.135(b), except as provided in § 61.132–1(c) and paragraphs (d), (e), and (f) of this section.

(2) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seal.

(b)(1) if an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.132–13.

(2) A first attempt to repair shall be made no later than 5 calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a) of this section provided the following requirements are met:

(1) Each dual mechanical seal system is:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § 61.132–14; or

(iii) Equipped with a system that purges the barrier fluid into a process stream with zero benzene emissions to the atmosphere.

(2) The barrier fluid system is not in benzene service and if the pump is covered by the standards in 40 CFR Part 60, subpart VV, it is not in VOC service.

(3) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump is checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section is checked daily or is equipped with an audible alarm, and

(ii) The owner or operator determines, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criteria determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.132–13.

(iii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 61.136(h)(2) for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump:

(1) Has no externally actuated shaft penetrating the pump housing,

(2) Is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in § 61.135(c), and

(3) Is tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times requested by the Administrator.

(f) If any pump is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 61.132–14, it is exempt from the

requirements of paragraphs (a)–(e) of this section.

§ 61.132–7 Standards: Exhausters.

(a) Each exhauster shall be monitored quarterly to detect leaks by the methods specified in § 61.135 except as provided in § 61.132–1(c) and paragraphs (d)–(f) of this section.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.132–13. A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) Each exhauster equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluids to atmosphere is exempt from the requirements of paragraphs (a) and (b) of this section provided the following requirements are met:

(1) Each exhauster seal system is:

(i) Operated with the barrier fluid at a pressure that is greater than the exhauster stuffing box pressure; or

(ii) Equipped with a barrier fluid system that is connected by a closed vent system to a control device that complies with the requirements of § 61.132–14; or

(iii) Equipped with a system that purges the barrier fluid into a process stream with zero benzene emissions to the atmosphere.

(2) The barrier fluid system is not in benzene service and if the exhauster is covered by standards in 40 CFR Part 60, Subpart VV, it is not in VOC service.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(4)(i) Each sensor as described in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm.

(ii) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both

(5) If the sensor indicates failure of the seal system, the barrier system, both based on the criterion determined under paragraph (d)(4)(ii) of this section, a leak is detected.

(6)(i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.132–13.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) An exhauster is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a control device and that complies with the requirements of § 61.132–14, except as provided in paragraph (f) of this section

(f) Any exhauster that is designated, as described in § 61.136(i)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a)-(e) of this section if the exhauster:

(1) Is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 61.135(c); and

(2) Is tested for compliance with paragraoh (f)(1) of this section initially upon designation, annually, and at other times requested by the Administrator.

§ 61.132–8 (Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above backgroud, as measured by the methods specified in § 61.135(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the conditions of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 61.135(c).

(c) Any pressure relief device that is equipped with a closed vent system capable of capturing and transporting leakage through the pressure relief device to a control device as described in § 61.132–14 is exempt from the requirements of paragraphs (a) and (b). of this section

§ 61.132–9 Standards; Sampling connection systems

(a) Each sampling connection system shall be equipped with a closed purge system or closed vent system, except as provided in § 61.132–1(c).

(b) Each closed purge or closed vent system as required in paragraph (a) shall:

(1) Return the purged process fluid directly to the process line with zero benzene emissions to the atmosphere; or

(2) Collect and recycle the purged process fluid with zero benzene emissions to the atmosphere; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of § 61.132–14.

(c) In-situ sampling systems are exempt from paragraphs (a) and (b) of this section.

§ 61.132–10 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 61.132–1(c).

(2) The cap, blind flange, plug, or second valve seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(c) When a double block and bleed system is used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

§ 61.132–11 Standards: Valves.

(a) Each valve shall be monitored monthly to detect leaks by the methods specified in § 61.135(b) and shall comply with paragraphs (b)-(e) of this section , except as provided in paragraphs (f), (g), and (h) of this section, § 61.132–1(c), and § 61.133–1 or § 61.133–2.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for 2 successive months may be monitored the first month of every quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after the leak is detected, except as provided in § 61.132–13.

(2) A first attempt at repair shall be made no later than 5 calandar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the followng best practices where practicable:

(1) Tightening of bonnet bolts;

(2) Replacement of bonnet bolts;

(3) Tightening of packing gland nuts;

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in § 61.136 (1)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

(1) Has no external actuating mechanism in contact with the process fluid,

(2) Is operated with emissions less than 500 ppm above background, as determined by the method specified in § 61.135(c), and

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times requested by the Administrator.

(g) Any valve that is designated, as described in § 61.136(i)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve demonstrates that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section, and

(2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in § 61.136(i)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the value demonstrates that the valve cannot be monitored without elevating the monitoring personnel more then 2 meters above a support surface.

(2) The equipment within which the valve is located is an existing process unit, and

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

§ 61.132-12 Standards: Pressure relief devices in liquid service and flanges and other connectors.

(a) Pressure relief devices in liquid service and flanges and other connectors shall be monitored within 5 days by the method specified in § 61.135(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.132-13.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 61.132-11(e).

§ 61.132-13 Standards: Delay of repair for equipment leaks.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

(b) Delay of repair of equipment will be allowed for equipment which is isolated from the process and which does not remain in benzene service.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator demonstrates that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair, and

(2) When repair procedures are effected, the purged material is collected and destroyed in a control device complying with § 61.132-14.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system, and

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair for exhausters will be allowed if:

(1) Repair requires the use of a seal system that includes a barrier fluid system, and

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(f) Delay of repair beyond a process unit shutdown will be allowed for a valve, if valve assembly replacement is necessary during the process unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next process unit shutdown will not be allowed unless the next process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

§ 61.132-14 Standards: Closed vent systems and control devices for equipment leaks of benzene.

(a) Owners or operators of closed vent systems and control devices used to comply with the provisions of § 61.132-6 (d) or (f), § 61.132-7 (d) or (e), § 61.132-8(c), or § 61.132-9(b) shall comply with the provisions of this section.

(b) Vapor recovery systems (for example, condensors and adsorbers) shall be designed and operated to recover the benzene vapors vented to them with an efficiency of 95 percent or greater.

(c) Enclosed combustion devices shall be designed and operated to reduce the benzene emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760° C.

(d)(1) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in § 61.135(e) except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) Flares shall operate with a flame present at all times, as determined by the methods specified in § 61.135(e).

(3) Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted being 7.45 MJ/scm or greater if the flare in nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in § 61.135(e).

(4) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the method specified in § 61.135(e)(4), less than 18 m/sec (60 ft/sec).

(5) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in § 61.135(e)(5).

(6) Flares used to comply with this subpart shall be steam-assisted, air-assisted, or nonassisted.

(e) Owners or operators of control devices that are used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their design.

(f)(1) Closed-vent systems shall be designed for and operated with no

detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified in § 61.135(c).

(2) Closed-vent systems shall be monitored to determine compliance with this section initially in accordance with § 61.05, annually, and at other times requested by the Administrator.

(3) Leaks, as indicatd by an instrument reading greater than 500 ppm above background or by visual inspections, shall be repaired as soon as practicable, but not later than 15 calendar days after the leak is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(g) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

§ 61.133 Alternative standards for valves in benzene service—allowable percentage of valves leaking.

(a) An owner or operator may elect to comply with an allowable percentage of valves leaking of equal to or less than 2.0 percent.

(b) The following requirements shall be met if an owner or operator wishes to comply with an allowable percentage of valves leaking:

(1) An owner or operator must notify the Administrator that the owner or operator has elected to comply with the allowable percentage of valves leaking before implementing this alternative standard, as specified in § 61.137(d).

(2) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Administrator.

(3) If a valve leak is detected, it must be repaired in accordance with § 61.132-11 (d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves in benzene service within the coke by-product recovery plant shall be monitored within 1 week by the methods specified in § 61.135(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves in benzene service for which leaks are detected by the number of valves in benzene service within the coke by-product recovery plant.

(d) Owners or operators who elect to comply with this alternative standard shall not operate valves in benzene service with a leak percentage greater than 2.0 percent.

(e) If an owner or opeator decides to no longer comply with § 61.133-1, the owner or operator must notify the Administrator in writing that the work practice standard described in § 61.132-11 (a)-(e) will be followed.

§ 61.133-2 Alternative standards for valves in benzene service—skip period leak detection and repair.

(a)(1) An owner or operator may elect to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

(2) An owner or operator must notify the Administrator before implementing one of the alternative work practices, as specified in § 61.137(d).

(b)(1) An owner or operator shall comply initially with the requirements for valves, as described in § 61.132-11.

(2) After 2 consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2.0, an owner or operator may begin to skip 1 of the quarterly leak detection periods for the valves in benzene service.

(3) After 5 consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2.0, an owner or operator may begin to skip 3 of the quarterly leak detection periods for the valves in benzene service.

(4) If the percentage of valves leaking is greater than 2.0, the owner or operator shall comply with the requirements as described in § 61.137 but can again elect to use this section.

§ 61.134 Alternative means of emission limitation.

(a) Permission to use an alternative means of emission limitation under Section 112(e)(3) of the Clean Air Act shall be governed by the following procedures.

(b) For equipment, design, and operational requirements of this subpart:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying test data to demonstrate equivalence of a means of emission limitation.

(2) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(3) For sources subject to § 61.132-2 (except tar decanters), §§ 61.132-3, 61.132-4(e), and 61.132-5(c), the Administrator shall compare test data for the means of emission limitation to a benzene control efficiency of 98 percent. For tar decanters, the Administrator shall compare test data for the means of emission limitation to a benzene control efficiency of 95 percent.

(4) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the equipment, design, and operational requirements.

(c) For work practices in this subpart:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying test data to demonstrate equivalence of means of emission limitation.

(2) For each source for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(3) For each source for which permission is requested, the emission reduction achieved by the equivalent means of emission limitation shall be demonstrated.

(4) Each owner or operator applying for permission shall commit in writing each source to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practice.

(5) The Administrator will compare the demonstrated emission reduction for the equivalent means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (c)(4) of this section.

(6) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the required work practices of this subpart.

(d) An owner or operator may offer a unique approach to demonstrate the equivalence of any means of emission limitation.

(e)(1) Manufacturers of equipment used to control equipment leaks of benzene may apply to the Administrator for permission to use an alternative means of emission limitation that achieves a reduction in emissions of benzene achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraphs (b), (c), and (d) of this section.

§ 61.135 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test method and procedure requirements provided in this section.

(b) Monitoring, as required by §§ 61.132, 61.133, and 61.134, shall comply with the following requirements.

(1) Monitoring shall comply with 40 CFR Part 60, Appendix A, Reference Method 21.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible, as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in §§ 61.132–2, 61.132–3, 61.132–4(b), 61.132–4(f), 61.132–5(c), 61.132–6(e), 61.132–7(f), 61.132–8, 61.132–11(f), and 61.132–14(f), the test shall comply with the following requriements:

(1) The requirements of paragraphs (b)(1)–(4) of this section shall apply.

(2) The background level shall be determined, as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible, as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d)(1) Each piece of equipment within a coke-by-product recovery plant is presumed to be in benzene service unless an owner or operator demonstrates that the piece of equipment is not in benzene service. For a piece of equipment to be considered not in benzene serivce, it must be determined that the percent benzene content can be reasonably expected never to exceed 10 percent by weight (for equipment other than exhausters), or 1 percent by weight for exhausters. For purposes of determining the percent benzene content of the process fluid that is contained in or contacts equipment, procedures that conform to the methods described in ASTM Method D–2267 (incorporated by reference as specified in § 61.18) shall be used.

(2)(i) An owner or operator may use engineering judgment rather than the procedures in paragraph (d)(1) of this section to demonstrate that the percent benzene content does not exceed 10 percent by weight for equipment other than exhausters, or 1 percent by weight for exhausters, provided that the engineering judgment demonstrates that the benzene content clearly does not exceed 10 percent by weight for equipment other than exhausters, or 1 percent by weight for exhausters. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in benzene service, however, the procedures in paragraph (d)(1) of this section shall be used to resolve the disagreement.

(ii) If an owner or operator determines that a piece of equipment is in benzene service, the determination can be revised only after following the procedures in paragraph (d)(1) of this section.

(3) Samples used in determining the percent benzene content shall be representative of the process fluid that is contained in or contacts the equipment or the gas being combusted in the flare.

(e)(1) Reference Method 22 of 40 CFR Part 60 shall be used to determine the compliance of flares with the visible emission provisons of this subpart.

(2) The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(3) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\left(\sum_{i=1}^{n} C_i H_i\right)$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25° C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20° C.

K = Constant, 1.740×10^7 (1/ppm) (g mole/scm) (MJ/kcal), where standard temperature for (g mole/scm) is 20° C.

C_i = Concentration of sample component i in ppm, as measured by Referrence Method 18 of Appendix A of 40 CFR Part 60 and ASTM D2504–67 (reapproved 1977) (incorporated by reference as specified in § 61.18).

H_i = Net heat of combustion of sample component i, kcal/g mole. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 61.18) if published values are not available or cannot be calculated.

(4) the actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by Reference Method 2, 2A, or 2C of 40 CFR Part 60, as appropriate; by the unobstructed (free) cross sectional area of the flare tip.

(5) The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$$V_{max} = 8.76 + 0.7084(H_T)$$

V_{max} = Maximum permitted velocity, m/sec.
8.706 = Constant.
0.7084 = Constant.
H_T = The net heating value as determined in paragraph (e)(3) of this section.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 61.136 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator may comply with the recordkeeping requirements in one recordkeeping system if the system identifies each record by each source.

(b) The following information pertaining to the design requirements of control equipment installed to comply with §§ 61.132–2, 61.132–3, 61.132–4, and 61.132–5 shall be recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(3)(i) For any control device used to comply with § 61.132–4, the recorded design specifications shall include any parameters that are necessary to determine proper operation and maintenance of the control device.

(ii) For a wash-oil scrubber, the design parameters include the wash-oil flow rate, the temperature of the gases existing the scrubber, and the pressure at the scrubber spray nozzle.

(c) The following information pertaining to process vessels subject to § 61.132–2, light-oil sumps subject to § 61.132–3, storage tanks subject to §61.132–4(b) or § 61.132–4(f), or mixer-settlers used to comply with § 61.132–5(c) shall be recorded and maintained for 2 years following each semiannual inspection; each annual maintenance inspection, and any other inspections for system blockage:

(1) The date of the inspection and the name of the inspector.

(2) A brief description of each visible defect in the source or control equipment and the method and date of repair of the defect.

(3) The presence of a leak, as measured using the method described in 61.135(b). The record shall include the method and date of repair of the leak.

(4) A brief description of any system abnormalities found during the annual maintenance inspection, the repairs made, and the date of repairs.

(5) A brief description of any system blockage, the repairs made, and the date of repair.

(d) The following information pertaining to any control device used to comply with § 61.132–4 shall be recorded and kept for a least 2 years:

(1) The dates when the control device was not operating as designed.

(2) The dates and description of any maintenance or repair of the control device.

(3) Any parameters monitored to ensure that control devices are operated and maintained in conformance with their design.

(4) If a wash-oil scrubber is used to comply with § 61.132–4, the records of the wash-oil flow rate, the temperature of the gases exiting the scrubber, and the pressure at the spray nozzle.

(e) When each leak is detected as specified in § 61.132–6, 61.132–7, 61.132–11 and 61.132–12, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(2) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in § 61.132–11(c) and no leak has been detected during those 2 months.

(3) The identification on equipment except on a valve, may be removed after it has been repaired.

(f) When each leak is detected as specified in § 61.132–6, 61.132–7, 61.132 11, and 61.132–12, the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date the leak was detected and the dates of each attempt to repair the leak.

(3) Repair methods applied in each attempt to repair the leak.

(4) "Above 10,000" if the maximum instrument reading measured by the methods specified in 61.135(b) after each repair attempt is equal to or greater than 10,000 ppm.

(5) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(6) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process shutdown.

(7) The expected date of successful repair of the leak if a leak is not repaired within 15 days.

(8) Dates of process unit shutdown that occur while the equipment is unrepaired.

(9) The date of successful repair of the leak.

(g) The following information pertaining to the design requirements for closed vent systems and control devices described in § 61.132–14 shall be recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(3) A description of the parameter or parameters monitored, as required in § 61.132–14(e), to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(4) Periods when the closed-vent systems and control devices required in § 61.132–6, 61.132–8, and 61.132–9, are not operated as designed, including periods when a flare pilot light does not have a flame.

(5) Dates of startups and shutdowns of the closed vent systems and control devices required in § 61.132–6, 61.132–7, 61.132–8, and 61.132–9.

(h) The following informatio pertaining to all equipment subject to the requirements in §§ 61.132–6 to 61–132–14 shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for equipment subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 61.132–6)e), 61.132–7(f), 61.132–8, or 61.132–11(f).

(ii) The designation of equipment as subject to the requirements of §§ 61.132–6(e), 61.132–7(f), 61.132–8, and 61.132–11(f) shall be signed by the owner or operator.

(3) A list of equipment identification number for pressure relief devices required to comply with § 61.132–8(a).

(4)(i) The dates of each compliance test as required in §§ 61.132–6(e), 61.132–7(f), 61.132–8, and 61.132–11(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(i) The following information pertaining to all valves subject to the requirements of 61.132–11 (g) and (h) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves that are designated as unsafe-to-monitor, an explanation for each valve stating why the valve is unsafe-to-monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult-to-monitor, an explanation of each valve stating why the valve is difficult-to-monitor, and the schedule for monitoring each valve.

(j) The following information shall be recorded for valves complying with § 61.133–2:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(k) The following information shall be recorded in a log that is kept in a readily accessible location:

(1) Design criterion required in § 61.132(d)(5) and 61.132–7)e)(2) and an explanation of the design criterion: and

(2) Any changes to this criterion and the reasons for the changes.

(l) Information and data used to demonstrate that price of equipment is not in benzene service shall be recorded in a log that is kept in a readily accessible location.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7114)

§ 61.137 Reporting requirements.

(a)(1) An owner or operator of any source to which this subpart applies shall submit a statement in writing notifying the Administrator that the requirements of 61.132, 61.133, 61.135, 61.136, and 61–137 are being implemented.

(2) In the case of an existing source or a new source which has an initial startup date preceding the effective date, the statement is to be submitted within 90 days of the effective date, unless a waiver of compliance is granted under § 61.11, along with the information required under § 61.10. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of new sources that did not have an initial startup date preceding the effective date, the

statement shall be submitted with the application for approval of construction, as described under § 61.07.

(4) The statement is to contain the following information for each source:

(i) Type of source (for example, a light-oil sump, benzene storage tank, or pump).

(ii) For equipment in benzene service, equipment identification number and process unit identification.

(iii) For equipment in benzene service, percent by weight benzene in the fluid at the equipment.

(iv) For equipment in benzene service, process fluid state in the equipment (gas/vapor or liquid).

(v) Method of compliance with the standard (for example, "gas blanketing," "use of a tar-bottom final cooler," "monthly leak detection and repair," or "equipped with dual mechanical seals").

(b) A report shall be submitted to the Administrator semiannually starting 6 months after the initial report required in § 61.137(a), which includes the following information:

(1) For process vessels subject to § 61.132–2, light-oil sumps subject to § 61.132–3, storage tanks subject to § 61.132–4, or mixer-settlers used to comply with § 61.132–5(c):

(i) A brief description of any visible defect in the source or ductwork.

(ii) The number of leaks detected and repaired.

(iii) A brief description of any system abnormalities found during the annual maintenance inspection, the repairs made, and the date of repair; and

(iv) A brief description of any system blockages or malfunctions, the repairs made, and the date of repair.

(2) If a control device is used to comply with § 61.132–4(a), the date and time of any occurrence when the monitored parameters exceed or drop below the parameter levels determined in the design specifications.

(3) If a wash-oil scrubber is used to comply with § 61.132–4(a), the date and time of any occurrence when the wash-oil flow rate or the pressure at the scrubber spray nozzle drop below the parameter levels determined in the design specifications, or the temperature of the gases exiting the scrubber exceeds the design specification temperature.

(4) For equipment in benzene service:

(i) Process unit identification.

(ii) For each month during the semiannual reporting period:

(A) Number of valves for which leaks were detected as required in § 61.132–11(b) of § 61.133–2.

(B) Number of valves for which leaks were not repaired as required in § 61.132–11(d).

(C) Number of pumps for which leaks were detected as described in § 61.132–6 (b) and (d)(6).

(D) Number of pumps for which leaks were not repaired as required in §61.132–6 (c) and (d)(6).

(E) Number of exhausters for which leaks were detected as described in § 61.132–7(f).

(F) Number of exhausters for which leaks were not repaired as required in § 61.132–7(g).

(5) The facts that explain any delay of repairs and, where appropriate, why a process unit shutdown was technically infeasible.

(6) Dates of process unit shutdowns that occurred within the semiannual reporting period.

(7) Revisions to items reported according to paragraph (a) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.

(8) The results of all performance tests to determine compliance with § 61.132–6(e), 61.132–7(f), 61.132–8(a), 61.132–11(f), 61.132–14(f), 61.133–1, and 61.133–2 conducted within the semiannual reporting period.

(9) A statement signed by the owner or operator stating whether all provisions of 40 CFR Part 61, Subpart L had been fulfilled during the semiannual reporting period.

(c) In the first report submitted as required in § 61.137(a), the report shall include a reporting schedule stating the months that semiannual reports shall be submitted. Subsequent reports shall be submitted according to that schedule unless a revised schedule has been submitted in a previous semiannual report.

(d) An owner or operator electing to comply with the provisions of § 61.133–1 or § 61.133–2 shall notify the Administrator of the alternative standard selected 90 days before implementing either of the provisions.

(Sec. 114 of the Clean Air Act as amended (42 U.S C. 7414))

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Wednesday
June 6, 1984

Part V

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, and Benzene Storage Vessels; Withdrawal of Proposed Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2582-6]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, and Benzene Storage Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed standards..

SUMMARY: The Environmental Protection Agency (EPA) listed benzene as a hazardous air pollutant under section 112 of the Clean Air Act on June 8, 1977 (42 FR 29332). Standards were subsequently proposed for benzene emissions from maleic anhydride process vents (45 FR 26660; April 18, 1980); ethylbenzene/styrene (EB/S) process vents (45 FR 83448; December 18, 1980); and benzene storage vessels (45 FR 83952; December 19, 1980). Withdrawal of these proposed standards was proposed on March 6, 1984 (49 FR 8386).

This **Federal Register** notice responds to public comments on the proposed withdrawal of these proposed standards and announces the EPA's final action to withdraw the three proposed standards identified above.

This final action is based on the conclusion that both the benzene health risks (annual leukemia incidence and individual lifetime risk from high exposure) to the public from these source categories and the potential reductions in health risks achievable with available control techniques are too small to warrant Federal regulatory action under Section 112 of the Clean Air Act.

DATE: The Proposed standards are withdrawn as of June 6, 1984.

ADDRESS: Dockets. Docket numbers OAQPS 79-3, A-79-49, and A-80-14, containing supporting information for this action, are available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert H. Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Summary of Withdrawal of the Proposed Standards

This notice responds to comments on the basis and rationale for withdrawing the proposed national emission standards for benzene emissions from maleic anhydride process vents, EB/S process vents, and benzene storage vessels. This final action is based on the conclusion that both the benzene health risks (annual leukemia incidence and individual lifetime risk from high exposure) to the public from these source categories and the potential reductions in health risks achievable with available control techniques are too small to warrant Federal regulatory action under section 112 of the Clean Air Act.

Overview

The Environmental Defense Fund (EDF) and the Natural Resources Defense Council (NRDC) filed a citizen suit on July 14, 1983, to compel the EPA either to take action on the five standards (maleic anhydride process vents, EB/S process vents, benzene storage vessels, benzene fugitive sources, and coke by-product recovery plants) then under development or to find that benzene clearly is not a hazardous pollutant pursuant to section 112 of the Clean Air Act. *NRDC* v. *EPA* (D.D.C.). An additional citizens suit was filed on October 4, 1983. *American Petroleum Institute et al.* v. *EPA* (D.D.C.). Additional parties intervened in the cases.

In response to plaintiffs' motions for summary judgment, the EPA stated on December 16, 1983, its intention to promulgate standards for benzene fugitive emissions, propose standards for coke oven by-product recovery plants, and propose withdrawal of proposed standards for benzene storage vessels, and maleic anhydride and EB/S process vents.

On January 27, 1984, the Court in the *NRDC* case ordered the EPA to publish in the **Federal Register**, by May 23, 1984, its final action on the proposed standards for maleic anhydride and EB/S process vents, benzene storage vessels, and benzene fugitive sources, and any proposed standard for coke oven by-product recovery plants. On March 6, 1984, the EPA published in the **Federal Register** (49 FR 8386) a proposal to withdraw the proposed benzene standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels.

Elsewhere in today's **Federal Register** are the EPA's final responses to public comments on the listing, health effects, and regulation in general of benzene, and proposed standards for coke oven by-product recovery plants and promulgated standards for benzene fugitive emissions.

Public Participation

The proposed withdrawals appeared in the **Federal Register** on March 6, 1984 (49 FR 8386). The preamble to the proposed withdrawals discussed the availability of background information documents (BID's) (EPA-450/3-84-002, EPA-450/3-84-003, and EPA-450/3-84-004), which described in more detail the basis for the proposed withdrawals. Public comments were solicited at the time of proposal, and when requested, copies of the BID's were distributed to interested parties. The comment period ended April 5, 1984.

The EPA received 15 comment submittals on the proposed withdrawals and BID's. These comments were submitted by an environmental group, non-Federal regulatory agencies, industry groups, and university students.

Background Information on Benzene

On June 8, 1977, the Administrator announced his decision to list benzene as a hazardous air pollutant under section 112 of the Clean Air Act (42 FR 29332). Supplementary background information regarding the health effects and listing of benzene as a hazardous air pollutant may be obtained from the maleic anhydride Docket Number OAQPS-79-3, Part I. A public hearing was held on August 21, 1980, to discuss the health effects and listing of benzene as a hazardous air pollutant. Comments were received and the EPA's responses are detailed in the EPA document, "Response to Public Comments on EPA's Listing of Benzene under Seciton 112" (EPA-450/5-82-003). A summary of these comments and responses appears separately in today's **Federal Register**, Under the title, "National Emission Standards for Hazardous Air Pollutants; Regulation of Benzene."

Major Comments on the Proposals

Commenters on the proposals were the American Petroleum Institute (API) (OAQPS 79-3(I) VI-D-1), the Chemical Manufacturers Association (CMA) (OAQPS 79-3(I) VI-D-2), Shell Oil Company (OAQPS 79-3(I) VI-D-3), Air Products and Chemicals Company (OAQPS 79-3(I) VI-D-4), Standard Oil of Ohio (OAQPS 79-3(I) VI-D-5), Tulsa City-County Health Department (OAQPS 79-3(I) VI-D-6), University of

Texas: Members of Prof. J. Schmandt's class (OAQPS 79–3(I) VI–D–7), Maryland Department of Health and Mental Hygiene (OAQPS 79–3(II) VI–D–3), the Natural Resources Defense Council (NRDC) (OAQPS 79–3(II) VI–D–4, 4a, 4b, 6, 7, and 8), and Conoco, Inc. (OAQPS 79–3(II) VI–D–5). Several commenters sent duplicate letters to other dockets, but for ease of discussion only the initial reference will be cited, where references appears. Also, where several commenters make the same comment, only one commenter will generally be referenced.

In general, industry comments strongly supported the withdrawal action, while the environmental groups and non-Federal regulatory agencies strongly opposed it. Both groups focused on two major comments to make their points: the legality of the withdrawal decision and the use of quantitative risk assessment as the basis of the decision.

Legal Basis for Withdrawal

Comments were divided on the EPA's interpretation of section 112 as not requiring the total elimination of public health risk. The NRDC (OAQPS 79–3(II) VI–D–4) asserted that "common usage of the term 'safety' does not match the EPA's interpretation of the word. 'Safe' is defined in *Webster's New Collegiate Dictionary* (173) as 'freed from harm or risk,' and 'secure from threat of danger, harm, or loss' " (NRDC, p. 7).

The Chemical Manufacturers Association (OAQPS 79–3(I) VI–D–2), on the other hand, endorsed the EPA's position as "an entirely reasonable and sensible interpretation," arguing that a "zero-risk construction of section 112 would require the banning of many major industrial chemicals" and that "Congress clearly did not intend such a result."

The EPA disagrees with the NDRC's assertion that "safe" implies "risk-free." Common understanding is that most activities are not, and cannot be made, risk-free. Common usage is *not* to characterize them therefore as "unsafe," as the Supreme Court noted in the OSHA benzene case. A common understanding of "safe" is "involving little or no *risk* of mishap or error." *The Random House Dictionary of the English Language, College Ed.*, 1969 (emphasis added.)

The NRDC also objects to the EPA's reliance on the Supreme Court's decision in the OSHA benzene case. *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980). The NRDC argues that that case is not "definitive" because the opinion of the Court was "rejected" by Justice Rehnquist, who neverthelsss concurred in the Court's judgment.

The EPA disagrees with this characterization of the decision. The decision clearly holds that " 'safe' is not the equivalent of 'risk'free.' " 448 U.S. at 642. The Court stated:

> By empowering the Secretary to promulgate standards that are "reasonably necessary or appropriate to provide safe or healthful employment and places for employment," the Act implies that, before promulagting any standard, the Secretary must make a finding that the workplaces in question are not safe. But "safe" is not the equivalent of "risk-free." There are many activities that we engage in every day-such as diving a car * * *—that entail some risk of accident or material health impairment; nevertheless, few people would consider these activities "unsafe." Similarly, a workplace can hardly be considered "unsafe" unless it threatens the workers with a significant risk of harm.
>
> Therefore, before he can promulgate *any* permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present * * *

Id. Justcie Rehniquist's concurring opinion does not reject or criticize the Court's opinion as to the meaning of "safe." Instead, it makes the completely separate argument that section 6 (b)(5) of the Occupational Safety and Health Act is an unconstitutional delegation of power because the word "feasible" as used in that provision is so vague. *Id.* at 671–688. That argument does not undermine the Court's opinion as to the meaning of "safe."

The NRDC commented that the Clean Air Act "does not authorize the administration creation of this 'significant risk' test as a precondition to requiring compliance with available control measures by sources of recognized hazardous air pollutants" (NRDC p. 4).

The EPA disagrees with the NRDC's assertion. The definition of hazardous air pollutant was amended in 1977. Pub. L. 95–95, section 401(c). The legislative history of the amendment shows that it permits EPA to use a "significant risk" test. The purpose of the amendment was to codify the approach to health risks in *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (D.C. Cir. 1976), *cert. den.* 426 U.S. 941 (1976). As the Committee Report states:

> In summary, the committee's action is intended to support the views expressed in * * * the *Ethyl* case * * * The committee's bill would also apply this interpretation to all other sections of the act relating to public health protection [including section 112].

H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 49 (1977) (The House Report reflects Congress' intent. The Conference Committee adopted the House bill without any relevant change or comment; there was no comparable provision in the Senate bill. H.R. Rep. No. 95–564, 95th Cong., 1st Sess. 183–184 (1977) (Conference Report)).

The *Ethyl* case plainly states that a finding of "significant risk" is an appropriate test for regulating. 541 F.2d at 13, 18 n. 32, 20, 30, 31 n. 62, 31–32. Moreover, the Committee Report makes clear that Congress was specifically adopting the significant risk test upheld in *Ethyl. Id.* at 43, 47, 49, 50, 51.

Comments on the Quantitative Risk Assessment

Comments on the health basis for the proposed withdrawals focused on the EPA's estimates of the leukemia risks associated with the public exposure to benzene emitted from the subject source categories, the EPA's methodology for the estimation of risks, and the appropriate role of the estimates in regulatory decisionmaking. The following sections address the major comment areas and provide the EPA's responses. Additional information on these issues can be found in the EPA's "Response to Public Comments on EPA's Listing of Benzene Under section 112" (EPA–450/5–003) and "Response to Public Comments on the Listing and Regulation of Benzene Under section 112: Comments of a General Policy Nature" (EPA–450/5–84–001).

Role of the Risk Estimates in the Decision to Propose Withdrawal. Commenters were divided on the appropriate role of the risk estimates in the regulatory decision process. Industry commenters generally supported the importance attached to the estimation of risk by the Agency noting that "a principal difficulty with EPA's previous approach was the Agency's failure to take a hard look at the significance of the risk * * * before committing itself to a regulatory program" (API, p. 3). Similarly, the commenters stated that "these levels of risk are low and do not justify the major efforts required to reduce same any further" (Shell, p. 1) and "the use of quantitative risk assessment to determine that the risks presented by benzene emissions from these source categories are too insignificant to warrant regulation under Section 112 also was appropriate" (CMA, p. 1).

The NRDC and the State of Maryland, on the other hand, questioned the EPA's emphasis on the health risks in decisionmaking, arguing that risk assessment was an "improper tool" (Maryland, p. 2) and that the Clean Air Act did not give the EPA authority to

exempt sources from regulation based on a "theoretical estimate of the number of cancer cases * * * and the probability that given individuals will get cancer" (NRDC, p. 1). The NRDC argued further that the EPA's "techniques for making quantitative risk assessments are too uncertain at this present primitive state of development to be relied on for exemption determinations" (NRDC p. 14).

The EPA agrees with commenters critical of the major role of risk assessment in the decision process that the risk estimates are subject to scientific uncertainty. Such assessments are, however, the only available means at present by which some measure of the magnitude of the health hazard from benzene air emissions can be estimated.

The Agency has, in the past, considered the use of surrogates for health risk, including emissions reductions and exposure levels, to reduce the reliance on the uncertain measure of carcinogenic risk. Such alternatives, however, do not address fundamental aspects of the risk equation; that the risk associated with benzene emissions may vary considerably depending on how and where the emissions are released, and that the carcinogenic potency of a substance, and hence the risk associated with exposure to a particular concentration, can vary by orders of magnitude.

In this regard, the EPA has concluded that the estimation of cancer risks and risk reductions for benzene is a reasonable and necessary part of the regulatory decision process.

Nature of the Health Risk Estimates. Commenters disagreed on the extent to which the EPA's estimates of health risk were representative of the actual risks posed by exposure to benzene. Industry commenters, including the American Petroleum Institute (OAQPS 79–3(I)VI–D–1), the Chemical Manufacturers Association (OAQPS 79–3(I)VI–D–2), and Shell Oil Company (OAQPS 79–3(I)VI–D–3), maintained that the EPA's estimates are conservative, that is, tending to overestimate actual risks. The NRDC (OAQPS 79–3(II)II–D–4), on the other hand, commented that the EPA's estimates contain "numerous uncertainties and unknowns * * * which could lead to substantially higher risks than predicted by the modeling" (NRDC, p. 14). In support of the position that the EPA inappropriately concluded that "the actual leukemia risks from benzene exposure are not likely to be higher than those estimated," the NRDC discussed several aspects of the EPA's analysis.

The NRDC asserted that the EPA's characterization of the benzene risk estimates as "plausible, if conservative" lacked support since the Agency "omitted from the risk assessments a wide variety of factors which tend to increase the public health danger" (NRDC, p. 16). According to the NRDC, the omitted factors included: consideration of other benzene health effects, the presence in the general population of subgroups more susceptible to benzene exposure, the potential for synergism between benzene and other substances, and the uncertainties in the EPA's exposure modeling methodology. The NRDC argued further that "without reliably conservative risk estimates, EPA cannot sustain its claim that the public health risk from these source categories is 'insignificant' " (NRDC, p. 17).

The EPA acknowledges that the benzene risk estimates do not reflect quantitative consideration of some of the factors mentioned by the NRDC. In most of the cases mentioned, however, the EPA does not presently have data which would enable the Agency to estimate additional risks if they exist. However, for the reasons stated below, EPA continues to believe that its risk assessment provides plausible, if not conservative, estimates of the benzene health risks even in light of these factors.

The EPA selected leukemia as the critical benzene health effect based on the strength of the occupational association between exposure and the incidence of this form of cancer, the nature of the effect itself, and the Agency's presumption that carcinogens must be considered to pose health risks at any nonzero exposure levels. While the EPA is aware of and has evaluated the noncarcinogenic effects associated with benzene exposure, such effects are generally associated with exposures in excess of 10 ppm (parts benzene per million parts air), are seldom seen below 1 ppm, and probably do not occur as a result of exposure at the ppb (part per billion) levels characteristic of ambient benzene exposure.

There are some recent animal and epidemiological data which suggest possible associations between benzene exposure and other related forms of cancer (lymphomas, myelomas). EPA is currently evaluating the studies that have become available since the publication of the Agency's health and risk assessment documents. It does not appear likely, however, that other associations, if found, will be of the strength of the benzene/leukemia association or contribute significantly to the health risk estimates.

EPA disagrees with the NRDC's comment that the benzene risk estimates cannot be considered "plausible, if conservative" unless the most conservative assumptions are used throughout the methodology. Risk estimates are derived through the multiplication of several factors including carcinogenic potency, exposure, and population. The choice of the most conservative assumption in each case would result in estimates unreasonably biased in the direction of overestimation.

Specifically, the NRDC expressed concern that the benzene risk factor (an index of the carcinogenic strength), derived by the EPA based on an equal weighting of individual factors derived from three epidemiological studies, was not appropriate for a "truly conservative assessment" and that principal weight should be given "to the study yielding the higher risk estimate" (NRDC, p. 19). The EPA continues to believe that an equal weighting (geometric mean) of the studies appropriately reflects the strengths and weaknesses of the studies as well as the variations in estimated risk.

Of the three studies, as NRDC points out, the risk factor derived from the Ott (OAQPS 97–3 (Part I) IV–H–2) data is on the order of twice that of Aksoy (OAQPS 79–3 (Part I) IV–J–16) and three times that of Infante (OAQPS 79–3 (Part I) II–I–81). The EPA agrees with the NRDC that the studies were not designed for the purpose of "generating precise *quantitative* dose/response curves" (NRDC, p. 20) and each has deficiencies when used in this way. For the purposes of quantifying health risks, however, the EPA concluded, in its evaluation of population risk, that the Infante study, considering its strengths and weaknesses, was "the least flawed of the three utilized" (OAQPS 79–3 (Part I) II–A–31a). The Ott study, on the other hand, while contributing the highest estimate of carcinogenic potency, was of "borderline statistical significance" (OAQPS 79–3 (Part I) II–A–31a).

On balance an equal weighting of the studies recognizes the strengths of the Infante study without ignoring the risk factor derived from the study by Ott. While the EPA agrees that this approach does not produce the "most conservative" unit risk estimate, the Agency continues to believe that it constitutes a reasonable approach that makes best use of the available scientific data.

The NRDC also expressed concern that the EPA's assessment of benzene

health risks did not consider the presence of subgroups within the general population that could be more susceptible to the effects of benzene than the occupational populations studied. The EPA acknowledged this possibility in the proposal withdrawal as one factor which would support a conclusion that "the maximum individual lifetime risks may be underestimated" (49 FR 8387). Aside from suggestive evidence that subgroups more susceptible to carcinogenic insult may be present in the population, the EPA does not have data that would permit the identification of such groups for benzene or the quantification of their increased risk. In the absence of such data, the Agency believes that the possibility of more susceptible groups is appropriately considered, with other factors, as qualitative factors that could influence the risk estimates.

Uncertainties in the assessment of population exposure were cited by the NRDC as support for the position that the EPA's risk estimates could not be considered "conservative." The NRDC expressed particular concern that emissions and ambient concentration estimates were often not supported by emissions measurements or ambient monitoring data.

The EPA concurs that monitoring data are often not available to calibrate estimates of hazardous pollutant emissions and resulting ambient concentrations. As the Agency pointed out in the proposed withdrawals, the estimation of emissions in dispersion modeling "can lead to overestimates or underestimates of exposure" (49 FR 8388). In a recent study of arsenic emissions from the ASARCO primary copper smelter in Tacoma, Washington, where monitoring data were available and extensive dispersion modeling had been conducted, the model appears to overpredict monitored concentrations close in to the facility. While this result could be different for other sources or locations, the EPA is not persuaded that in the absence of measured data, the health risks would be routinely underestimated.

The NRDC also questioned the EPA's assumption of "flat terrain" in the dispersion modeling of emissions, contending that this assumption could underestimate exposure associated with sources in "hilly" areas or in the presence of "substantial man-made structures" (NRDC, p. 23). The assumption of flat terrain reflects the difficulties associated with predicting ambient concentrations in areas of complex topography. The EPA agrees that this assumption could lead to the underestimation of exposure under certain meteorological conditions in the vicinity of such sources. As the Agency pointed out at proposal, however, EPA's benzene exposure models also assume that the exposed population is immobile and outdoors at their residence, continuously exposed for a lifetime to the predicted concentrations. To the extent that benzene levels indoors are lower and that people do not reside in the same area for a lifetime, these assumptions will tend to overpredict exposure (49 FR 8388).

Concerning the benzene emissions from multiple sources, the NRDC expressed concern that EPA's analysis did not reflect the cumulative impact on health risks of emissions from several sources located in a particular area. EPA's analysis aggregates risk across stationary source categories, therefore, the cumulative effects on cancer incidence from multiple sources are considered. Individual risk, on the other hand, could be affected as the result of exposure to several sources of a pollutant. Based on EPA's analyses, however, exposure concentrations tend to fall off very quickly with distance from a source. Except in the rare case where two or more sources may be immediately adjacent, maximum lifetime risk is unlikely to be significantly affected.

Finally, the NRDC commented that the EPA's failure to consider the potential synergism of benzene with other environmental factors makes the Agency's analysis "at best only *internally* conservative; the analysis is not conservative with respect to external factors which it does not take into account" (NRDC, p. 25)

The EPA does not have information that benzene synergizes with other agents in the induction of leukemia or other relevant health effects. As with the possibility of more susceptible subgroups, the Agency agrees with the NRDC that the potential for synergism is appropriately a qualitative factor in the analysis and should be considered accordingly. The EPA disagrees with the NRDC's position that the Agency has failed to consider this factor in the benzene rulemaking and that the omission of quantitative consideration of such factors "guarantees underestimation of the danger to public health" (NRDC, p. 26).

Appropriate Measures of Health Risk. In the proposed withdrawals, the EPA presented estimates of two measures of cancer risk: "maximum lifetime risk," expressed as the probability that an individual will contact leukemia as the result of a lifetime of exposure to the maximum predicted annual average benzene concentration; and "annual incidence" expressed as the predicted number of leukemia cases per year in the exposed population.

Two commenters expressed concern about the measures used by the EPA. The NRDC argued that the EPA's expression of individual risk as a "statistical risk" represented "semantic sleight of hand." "It is saying that the death is acceptable just because it strikes randomly from among a pool of people and because the identity of the specific victim may not be known" (NRDC p. 13). The State of Maryland commented that "property line concentrations [were] not used to determine maximum degree of risk" (Maryland, p. 2).

EPA's intent, in presenting maximum lifetime risks, has been to provide an illustration of the cancer risks which could be associated with a reasonable, worst-case exposure situation. The EPA has not characterized this measure as a "statistical risk," or attempted to avoid the conclusion that death could be the result of exposure to such risks. Although several of the assumptions made in the determination of this measure tend to be conservative in nature, the EPA would not argue that such risks are implausible or of less importance in the decision process.

The routine use of fenceline concentrations, in the EPA's judgment, would not guarantee that the risks calculated would represent the "maximum degree of risk." Emissions from high level sources may have maximum impact well beyond plant boundaries. The EPA's exposure models are designed to calculate the point of maximum exposure. The constraints placed on the location of this concentration are limited to: (1) That it be outside plant boundaries, or in a place to which the public has ready access; and (2) that it represents an area in which people are known to reside.

Magnitude of the Health Risk. Commenters were also divided on the EPA's conclusion that the health risks and potential risk reductions associated with the subject source categories were "too small to warrant Federal regulatory action under section 112" (49 FR 8386).

The NRDC and the State of Maryland challenged the EPA's conclusion, noting that "no one should have to lose life or health to hazardous air pollutants" (NRDC p. 14) and asking how, in each case the "EPA determined that this [was] a small number" (Maryland, p. 1). Both commenters also expressed concern that the risks attributable to benzene were only part of the larger

problem. Another commenter (OAQPS 79–3 (I) VI–D–7) felt that it was inappropriate to characterize the potential health risk reductions from current levels as small when EPA described the reductions since proposal of the standards as significant. The commenter said that in terms of orders of magnitude, the potential reductions from current levels were greater than the reductions achieved since proposal of the standards.

Industry commenters, however, supported the EPA's conclusions, commenting that "the estimated worst case public health risks posed by these three sources fall well below the risk cutoffs used by EPA and other Federal agencies regulating cancer risks under similar circumstances" (API, p. 2). In support of this point, the API submitted tables of lifetime risks for other environmental hazards (e.g., smoking, drowning, electrocution) purporting to show that the risks attributable to benzene exposure were smaller. Shell Oil and the CMA also endorsed the EPA's conclusion, commenting that the risks associated with emissions from the three categories "are insignificant by any reasonable measure" (CMA, p. 2) and "do not justify the major efforts required to reduce same any further" (Shell, p. 1).

Upon consideration of the public comments, the EPA remains persuaded that the health risks attributable to benzene emissions from the maleic anhydride, ethylbenzene/styrene, and benzene storage vessel categories and the extent to which these emissions could be reduced by applicable controls, are too small to warrant Federal regulation.

While it would appear that percentage wise more reduction in health risks could be achieved through application of available control techniques (erroneously referred to by the commenter as BAT) from current levels than the reductions that have occurred since proposal of the standards, in absolute differences this is not the case. These differences reveal that more reduction has occurred since proposal that could be gained through additional control. For example, the reduction since proposed standards in maximum lifetime risk from maleic anhydride process vents is more than twice the reduction that could now be achieved with additional controls. Likewise, the reduction from EB/S process vents is more than an order of magnitude greater than the reduction that could now be gained. Thus, the commenter is measuring the reduction of what is left *after* significant decreases have already occurred. In this case, it is the difference and not the percent reduction that should be judged.

The Administrator's finding is based not only on the magnitude of these risks alone and in comparison with other major sources of benzene emissions but also on the risks associated with other recognized hazards, including the risks associated with other sources of hazardous air pollutants. The Administrator recognizes that a strong element of judgment is present in such a decision, but feels that such judgment is necessary in carrying out the EPA's responsibilities for decisionmaking under uncertainty. The Administrator has concluded, therefore, that benzene emissions from the subject source categories do not pose significant public health risks and do not warrant Federal regulation under section 112.

The NRDC, in support of its contention that the health impact estimates for the source categories are not conservative, made several comments about the underlying emission estimates used to compute the annual incidence and maximum lifetime risk.

The NRDC noted that emission data used in quantifying emissions are largely estimated, based on engineering judgment, which can consist of widely varying opinion. They concluded that the EPA has no basis in considering that these emission estimates are systematically overestimated or underestimated, and therefore cannot be interpreted as conservative.

Another commenter (OAQPS 79–3(I) VI–D–2) judged the emission estimates for maleic anhydride and EB/S process vents in the withdrawal proposal as too high and provided revised estimates.

Emissions from these source categories are estimated from a combination of emission measurements and engineering judgments. The emission estimates obtained by the EPA prior to proposal are reviewed in detail through an extensive public review process which includes formal review by the National Air Pollution Control Techniques Advisory Committee. Further review during the public comment period after proposal generally yields additional and revised emission information, updating the previous information, which is then incorporated into the analyses. While some of these estimates may overestimate or underestimate actual emissions from individual sources, they represent reasonable estimates of emissions from the sources. The emission estimates do not reflect a systematic conservatism

The emission estimates are subjected to dispersion modeling in order to estimate ambient concentrations in surrounding areas. The dispersion models used in these analyses are believed to be capable of providing average annual ambient concentration estimates within a factor of about 2 of the actual concentrations (EPA–450/4–81–002). The EPA believes that the dispersion modeling used is appropriate and provides estimated concentrations at a reasonable level of accuracy.

In regard to the commenter that provided revised lower emission estimates, the EPA has neither confirmed nor refuted these estimates. The commenter estimated that benzene emissions from maleic anhydride process vents werenow about 520 Mg/yr and that only two plants currently use benzene as a feedstock; and that benzene emissions from EB/S process vents were now about 155 Mg/yr. These estimates would tend to lower the health risk estimates, although the EPA has not recalculated to what extent. Thus, even if these revised emission estimates were accurate, they would not alter the basis for withdrawal.

The NRDC challenged assumptions made in estimating baseline emissions from EB/S plants and benzene storage vessels. In commenting on the benzene storage emission baseline, the NRDC stated that the EPA should have continued to use the EPA benzene test data in evaluating the need for a standard rather than the API (2519 series) test data. The commenter stated three reasons for this position.

First, the commenter stated that the EPA test series was conducted on benzene itself and that the use of the 2519 series requires a projection from other liquids that may have a different emissions behavior. Second, the EPA test tank used shingled seals on the non-contact internal floating roof, which may be more representative of actual equipment in use than the continuous seals tested in the 2519 series. Additionally, the commenter was concerned that the use of emissions data developed on continuous seals would result in an underestimate of the health risks associated with benzene storage. Third, the commenter stated that the EPA has a duty to err on the side of caution on the development of risk estimates and, therefore, the higher emission projections should be used.

As stated in the background information document (BID) (EPA–450/3–84–004) supporting the proposed withdrawal, the EPA considered all of the available test data prior to deciding which test series to use. As discussed at

that time, the crux of the first issue is whether there is some property of benzene that leads to the higher measured emissions or whether there is some flaw in the test procedure that leads to artificially high results.

As discussed in the BID, the EPA knows of no properties of benzene that would lead to the radically higher emissons measured in the EPA series. The absence of a physical mechanism to account for the variation between the EPA series and other testing programs led the Agency to the conclusion that the test methods used during the EPA test series produced results that are artificially high and, thus, not descriptive of benzene emissions from benzene storage vessels. On this basis, the commenter's first contention that the use of the 2519 series requires a projection from other substances with different emissions behavior is incorrect. The EPA found no differences in physical mechanisms but did find differences in test procedures, and on this basis believes the differences in test procedures, not liquid type, led to the higher measurements in the EPA series. Therefore, the EPA's determination that the 2519 series should be used remains unchanged.

The commenter's second point was that the equipment tested during the 2519 series is representative of the performance of advanced control technology and may not be representative of actual controls in existing tanks. There are some data that speak to this issue that, while not specifically discussed in the preamble for the proposal to withdraw, were in fact considered. Based on a 1978 survey of benzene storage tanks, it was concluded that about 12 percent of the benzene storage vessels representing about 12 percent of the nationwide benzene storage capacity are equipped with shingled seals. These tanks represent about 17 percent of the existing internal floating roof tanks that store benzene. The EPA agrees that the risks to public health from benzene storage vessels equipped with shingled seals were not accounted for in the proposal to withdraw. Therefore, the Agency has reevaluated both the maximum lifetime risk and the leukemia incidence by assigning an extremely conservative emission estimate to tanks equipped with shingled seals.

In evaluating the health risk posed by benzene storage vessels equipped with shingled seals it should be noted that there are no emissions tests on shingled seals that are considered valid. Only the EPA series tested internal floating roofs equipped with shingled seals. It is not known what portion of the higher emissions measured during these tests over the 2519 test series should be ascribed to the shingled seal system as opposed to the test methodology. One approach in determining the risk associated with shingled seals is to attribute all of the higher emissions to the shingled seal system. On this basis, the emissions from benzene storage vessels equipped with these seals, as opposed to continuous seals, would be no higher than a factor of 10. Because of the methodological problems this factor of 10 is almost certainly an overestimate. Assuming that emissions from shingled seal tanks are greater than those from tanks with continuous seals, the baseline health impacts were reexamined. Under this assumption, 12 percent of the leukemia incidence would be increased by a factor of 10. In evaluating the maximum lifetime risk, it was assumed that emissions from all of the benzene storage vessles at the plant would be increased by a factor of 10. This approach results in a maximum lifetime risk of about 3.6×10^{-4} and a leukemia incidence of 0.09 cases per year. Using available control techniques, leukemia incidence could be reduced to roughly 0.036 to 0.0018 cases per year, a reduction of about 0.054 to 0.088 cases per year, and maximum lifetime risk to roughly 2.9×10^{-5} to 7×10^{-6}. These baseline numbers and potential reductions are still considered too small by the Administrator to warrant Federal regulatory action under section 112. Additionally, it is believed that shingled seals are not being installed on new tanks, and thus the existing shingled seal tanks will eventually be replaced by continuous seal tanks. Therefore, there is no basis upon which to conclude that benzene storage vessels equipped with shingled seals present a significant public health risk or that there would be any significant reduction in the risks associated with benzene storage vessels by equipping these vessels with continuous seals.

The third portion of the commenter's rationale, that the EPA should err on the side of caution, does not fully consider the obligation of reasonable accuracy in selecting appropriate test data upon which to estimate impacts. As discussed above, it would be inappropriate to use the EPA test data to estimate emissions from tanks with continuous seals. Because most tanks are equipped with continuous seals, such an approach would lead to a drastic overestimate of emissions from the benzene storage source category. The Agency admits that the use of the 2519 test series test data may have resulted in a slight underestimation of the risks associated with benzene storage becuase there is an implicit assumption that all tanks are equipped with continuous seals. As previously discussed, there is uncertainty about the exact magnitude of emissions from tanks equipped with shingled seals. However, the above reasonable conservative adjustments to account for shingled seals do not change the conclusion that Federal regulatory action is unwarranted for benzene storage vessels.

The NRDC also objected to the assumption of a 98-percent benzene destruction efficiency for all existing flares in the EB/S industry. The NRDC stated that even assuming that there are conditions under which flares can achieve 98 percent reduction, the EPA has not shown that flares currently in use at EB/S plants operate under these conditions.

In determining the benzene destruction efficiency to use in emission estimates for the EB/S industry, the EPA evaluated available flare test data. The best information is summarized in the proposed withdrawal BID (EPA–450/3–84–003) and contained in Docket Number A–79–49. In tests using commercial flare heads, combustion efficiencies of over 98 percent were measured over a wide range of conditions under which most industrial flares are operated. Lower efficiencies were obtained in tests: (1) When using very high steam-to-gas ratios (about 10 times more steam than required for smokeless operations); and (2) when burning gases with low heat contents at high velocities.

Industrial flares are not normally operated at the high steam-to-gas ratios that resulted in low efficiency in some tests because steam is expensive and operators make every effort to keep steam consumption low. Furthermore, flares are not generally operated at the conditions which produce low efficiency (low heat content at high velocities) because of the risk, when operating at these conditions, of flame extinction and subsequent explosion hazards. In addition, flares in the EB/S industry are required to operate smokelessly by State regulations.

The commenter is correct that the detailed information on individual flares in the EB/S industry needed to firmly establish individual removal efficiencies is not contained in the withdrawal BID, and in fact is not currently available. However, the 98-percent value is considered to be a reasonable estimate of flare efficiency at EB/S plants for the purpose of estimating emissions. This efficiency estimate does not suggest that

all EB/S flares are only 98 percent efficient or that individual flares could never have less than 98 percent efficiency.

The NRDC also challenged other aspects of the EPA's use of health estimates in decisionmaking, asserting that it is inappropriate to evaluate current estimates in the withdrawal decision and that it is inappropriate to evaluate parts of sources and consider health risks of these parts independently.

The NRDC claimed that a number of plants in the affected industries have controlled emissions as a result of anticipating final benzene rules based on the proposals. They felt that this emission reduction has led the EPA to believe that the standards are no longer warranted, but in fact, it was the issuance of proposed rules that caused facilities to do what they did. Furthermore, they and another commenter (OAQPS 79-3(I) VI-D-7) stated that withdrawing the proposals eliminates incentives to operate and maintain control equipment, and favors firms that chose not to install controls. The commenter adds that because the current level of control was precipitated by the proposed standard, it is inappropriate to conclude that the health impacts of the source categories are small based upon the current emission levels.

In estimating emissions at proposal, the EPA used information acquired before the proposal date. This information consisted basically of data received through literature searches, previous studies, section 144 information requests, comments on draft chapters, and comments received at the National Air Pollution Control Techniques Advisory Committee meeting. In other words, while these standards were proposed in 1980, the information used came primarily from the 1977–1979 period. In the years since 1977–1979, in addition to State and local regulations, energy and economic concerns have forced industries to seek less expensive and more resource conservative means to conduct business.

In the maleic anhydride industry a new process was commercially developed that produced maleic anhydride from n-butane, a feedstock less expensive than benzene. As more companies recognized the competitive advantage of using n-butane rather than benzene, the industry eventually converted most of the existing plants to n-butane from benzene, and is expected to build only n-butane plants in the future. Only two plants currently use benzene (OAQPS 79-3(I) VI-D-2), and by the end of next year, only one is projected to use benzene.

Likewise, in the EB/S industry, controls have been added in the form of product recovery devices or by routing emissions to the process unit's boilers in order to conserve energy (less fuel would be required due to the energy content of the waste stream).

No change in controls on storage tanks was assumed to have occurred since proposal. However, emission estimates have declined because of revised emission factors.

There is no evidence that these changes occurred as a result of the proposed standards or anticipation of promulgated standards. It is more likely that these changes have occurred due to the changing economic environment in which these industries operate. There is also no reason to believe that emissions will increase through lack of proper operation and maintenance as a result of no standard. To the degree that controls are product recovery devices and boilers, economics will encourage good operation and maintenance. Finally, firms that have not installed control systems are not "unfairly favored" over those that have. The Clean Air Act allows for a waiver of up to 2 years after promulgation of a rule for an existing source to install control equipment to comply with such rule. Firms would have ample time to install whatever controls would be required by a final rule. Thus, firms that chose to install controls did so with full knowledge of this provision and did not do so "in anticipation" of a final rule.

Consequently, the EPA feels that the commenter's contention that firms installed controls in anticipation of a standard is unfounded, and that the withdrawal decision is appropriately based on the current level of control. If, however, there is reason to believe that emissions will substantially increase in the future due to removal or negligence of emission controls, then regulation of these sources may be reconsidered.

The NRDC, as well as the State of Maryland (OAQPS 79-3(II) VI-D-3), felt that it was inappropriate not to consider cumulative health effects from exposure to multiple sources of benzene. At maleic anhydride and EB/S plants, for example, populations are exposed not only to emissions from process vents, but also to storage emissions. The commenters felt that the Agency had "atomized" a significant problem into insignificance by breaking it up into small parts and considering the parts independently.

The Agency initially analyzed different sources of benzene independently for two major reasons. First, emission sources with like characteristics were grouped for standards development because technology that could be used to control these sources was the same. Standards could be developed more easily and quickly than by trying to develop one regulation for several very different types of sources (e.g., process vents, storage tanks, equipment leaks) at the same location. Second, considering storage tanks as a class eliminated the need to write separate storage tank standards for each type of plant using benzene.

As the commenters noted, different sources were considered independently, but not to reduce the estimated health impact of any one to the point where regulation was not warranted at the Federal level. In fact, when the estimated health impacts due to storage emissions are combined with those due to process vents at maleic anhydride and EB/S plants, there is no significant increase in the total health impact from these plants. For maleic anhydride the increase in annual incidence is less than 0.001 cases per year, and for EB/S plants the increase is less than 0.002 cases per year. Likewise, at maleic anhydride plants, the maximum lifetime risk would still be less than 8×10^{-5}, and at EB/S plants, the maximum lifetime risk would not be significantly different than that from process vents alone.

The EPA continues to believe that the construction and the character of the benzene health risk estimates is largely a matter of informed judgment. As the NRDC points out, there are elements of and omissions from the assessment process that could support a conclusion that the calculated risks underestimate the actual risks.

In assessing whether the EPA's analysis is conservative, NRDC seems to assume that by showing any factor that might increase risk that the EPA has not accounted for in full quantitative terms, it has shown that the analysis is not "conservative." This, however, takes no account of major elements in the EPA's analysis that are regarded as conservative, or tending to overestimate risk. These include, as noted in the EPA's proposal, the use of linear, nonthreshold models for risk extrapolation and the assumption that the exposed population is immobile and outdoors, exposed for a lifetime to the predicated concentrations. On balance, the EPA believes that the estimates for benzene tend to be conservative for the risk of leukemia, and in the absence of sufficient data to the contrary, at least

plausible surrogates for the magnitude of the total benzene health risk.

Other Comments

One commenter (OAQPS 79-3(I) VI-D-3) felt that the EPA "should conduct the same extensive reviews and studies that it eventually made for the three proposed benzene regulations" prior to listing future pollutants as hazardous and/or proposal of regulations for such pollutants.

The EPA does undertake thorough studies upon which it bases its decisions on the listing, and very detailed studies prior to proposal of regulations for all hazardous air pollutants. Such studies are reviewed at length by interested parties and ample opportunity to comment and add input is provided prior to proposal of any regulations. The EPA intends to continue to develop the appropriate documentation for listing and regulatory decisions.

One commenter (OAQPS 79-3(II) VI-D-3) thought that it was inconsistent that the EPA is withdrawing proposed standards for benzene storage, but is planning to control benzene storage tanks at coke oven by-product recovery plants. In addition, the commenter was concerned that there would be no control of truck loading facilities.

Storage tanks at coke oven by-product recovery plants are closely related to other facilities at those plants from both a process point of view, and a control technique point of view. These tanks are more easily controlled as a group along with other emission sources at coke oven by-product recovery plants because of control techniques, such as gas blanketing and wash-oil scrubbers, that are reasonably available at only this type of facility. Consequently, because of the available control techniques peculiar to coke oven by-product recovery plants, storage tanks at these sources are appropriately covered under the coke by-product recovery standard.

Regulation of truck loading facilities is outside the scope of this rulemaking.

One commenter (OAQPS 79-3(II) VI-D-3) was concerned that two EB/S plants currently "mothballed" (Arco, Texas and Koch, Texas) could be started up uncontrolled and could expose the population to previous levels of benzene.

The EPA has no reason to believe that those facilities which have been closed or "mothballed" will reopen as EB/S plants. The styrene unit at Koch Refining's Corpus Christi plant has been shut down for over 3 years due to market conditions, and the company has no plans to reopen it as a styrene facility (A-79-49 IV-C-28). Arco has permanently converted its Port Arthur, Texas, ethylbenzene unit to other uses (A-79-49 IV-F-2). At some of the closed plants, process equipment has been removed.

The NRDC (OAQPS 79-3 (II) IV-D-8) believed that the EPA promulgated a new source performance standard (NSPS) for synthetic fiber production facilities (49 FR 13646; April 5, 1984) on the basis that the Agency had already spent most of its resources on the project. The NRDC felt that because most of the Agency resources had already been sent to develop final benzene rules, it should promulgate them for the same reason as the NSPS for synthetic fibers production facilities. They concluded that by withdrawing the proposed benzene standards, the Agency was being inconsistent.

The NRDC misstates EPA's rationale for promulgating the synthetic fiber NSPS. The synthetic fiber industry was listed by EPA as a "significant contributor" to air pollution under section 111(f) of the Act. 40 CFR 60.16, source category No. 25. EPA therefore had a legal duty under section 111(f) to promulgate whatever NSPS reflected best demonstrated technology for that industry.

The issue raised in that NSPS rulemaking was whether the synthetic fiber industry was indeed a "significant contributor." Commenters argued that it was not, since they believed that no new sources were expected in the industry in the next 5 years. 49 FR 13646, 13647 col. 3 (April 5, 1984). EPA rejected this argument. *Id.* It was only in the background document that EPA noted in passing that most of the Agency resources needed to promulgate the NSPS had been spent.

In the case of the benzene source categories, the test for whether they should be regulated is whether they present significant risks. Since they do not, they are not being regulated, regardless of the amount of resources EPA has spent studying them.

A commenter (OAQPS 79-3 (I) VI-D-7) recommended that EPA should consider developing a local, regional, or State enforcement mechanism to address issues more efficiently than Federal regulations and to ensure that industry's reduced emissions continue. Although the commenter did not specify what mechanisms should be developed, we do believe that, in general, there are important roles for non-Federal authorities and we would not discourage those roles. For example non-Federal authorities can sometimes conduct detailed analyses of individual plants to determine appropriate levels of control for local circumstances and monitor control system operation and maintenance practices, emissions, and ambient concentrations.

Two commenters (OAQPS-79-03 (I) VI-D-1 and VI-D-5) suggest that some editorial changes be made in the benzene storage BID. These suggested changes deal mainly with the clarity of the discussion of the emissions test data. However, because no background document will accompany this promulgation, no revisions will be made.

One commenter (OAQPS 79-03-I, VI-D-6) disagreed with calculated efficiencies of various control technologies presented in the benzene storage BID. The commenter pointed out that actual emissions from floating roof tanks vary with tank specific factors such as seal gap area.

The EPA believes the emission factors to be appropriate for the majority of equipment that is currently in service. The EPA agrees that the emission factors do not account for unusual seal types: that is, seals with holes, tears, or other severe problems. However, while these unusual seal types do exist, it would be inappropriate to consider them in developing emission factors for the typical equipment currently in service. Thus, the EPA feels that the emission factors used are reasonable, on balance.

Docket

The dockets are organized and complete files of all the information submitted to, or otherwise considered by, the EPA in the development of this action. The principal purposes of the dockets are to: (1) Allow interested parties to effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review except for interagency review materials [section 307(d)(7)(A)].

Miscellaneous

In accordance with Section 117 of the Act, publication of this action was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from the OMB to the EPA and any EPA responses to those comments

are available for inspection in Docket Number OAQPS 79–3 (maleic anhydride), A–79–49 (EB/S), or A–80–14 (benzene storage), Central Docket section, at the address given in the **ADDRESSES** section of this preamble.

List of Subjects in 40 CFR Part 61

Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

Dated: May 23, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–14481 Filed 6–5–84; 8:45 am]

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federal register

Wednesday
June 6, 1984

Part VI

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Amendments to General Provisions; Proposed Amendments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2539-3]

National Emission Standards for Hazardous Air Pollutants; Amendments to General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Amendments.

SUMMARY: This proposal would amend the General Provisions for national emission standards for hazardous air pollutants to: (1) Eliminate repetition in Part 61; (2) add procedures and criteria for determining if proposed changes to a source constitute modification; and (3) add procedures and criteria for permitting the use of alternative means of emission limitation that the Administrator finds to be equivalent to any design, equipment, work practice, or operational standard for purposes of compliance with that standard. In addition, the proposal would simplify the language of the General Provisions.

A public hearing will be held to provide interested persons an opportunity for oral presentations of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before August 20, 1984.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 27, 1984, a public hearing will be held on July 24, 1984 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 27, 1984.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number, A–81–12, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur. Persons wishing to present oral testimony should notify Ms. Journigan, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Docket. Docket No. A–81–12 containing supporting information used in developing the proposed amendments is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Gilbert H. Wood, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number (919) 541–5578.

SUPPLEMENTARY INFORMATION: Under the authority of section 112 of the Clear Air Act, EPA has been promulgating national standards for the emissions of hazardous air pollutants from existing and new stationary sources. All of the standards are contained in Part 61 of 40 CFR, each constituting a subpart. Subpart A, the first subpart of Part 61, comprises general provisions which apply to all of the standards in the subsequent subparts.

Presently, many provisions that apply to all the standards and would be applicable to future standards in Part 61 are in each standard's subpart. Incorporating these provisions into the subpart of the General Provisions would eliminate the need to repeat them in the subparts of future standards. An owner or operator of a source who wants information on the general requirements for sources emitting hazardous pollutants would find it in Subpart A. An owner or operator could then focus on the requirements that are specific to a source category and particular hazardous pollutant in each subpart thereafter. The majority of the provisions which are proposed to be incorporated into Subpart A from other subparts relate to emission testing, emission monitoring, and recordkeeping. This proposal would not remove these provisions from the subparts of the standards that are presently in Part 61 in order to avoid unnecessary amendments to these standards. Instead, these provisions could be removed from each standard during its next review.

The proposed amendments to the General Provisions of Part 61 would also provide criteria and procedures for determining whether proposed changes to a source would constitute modification. These amendments would help clarify EPA's implementation of modification as it is defined in the Clean Air Act and in the present General Provisions of Part 61 for owners or operators who propose to make changes to a source which may result in increased emissions.

In addition, the proposed amendments would add procedures that would be followed when any person requests that the Administrator permit the use of an alternative design, piece of equipment, work practice or operation to one specified by a standard. As provided by the Clean Air Act, the Administrator may permit the use of an alternative method of controlling emissions if, after notice and opportunity for a public hearing, he determines that the alternative method is equivalent, in terms of reducing emissions, to that specified in the applicable standard.

The proposal would also add to the General Provisions the list of air pollutants which have been designated as being hazardous pursuant to section 112 of the Clean Air Act. This would make it accessible to the public and remove uncertainty that the public may have as to the status of a particular pollutant between listing of the pollutant and promulgation of emission standards for that pollutant.

The proposed amendments would simplify Part 61 by eliminating the concept of a method of emission testing that is equivalent to a reference method specified in a standard, meaning that it has a consistent and quantitative relationship to the appropriate reference method. Each test method approved by the Administrator which is not a reference method would be classified as an alternative method, meaning it is adequate for determining compliance but does not necessarily have a consistent and quantitative relationship to the appropriate reference method.

The proposed amendments would also simplify the wording and punctuation in Subpart A.

Discussion of Amendments

The following discussion is organized by the headings of the sections of Part 61 which would be amended by this proposal. The sections are discussed in the order in which they appear in the proposed regulation.

List of Hazardous Air Pollutants

This notice proposes to add to 40 CFR 61.01 a list of those air pollutants which have been designated as hazardous air pollutants pursuant to section 112 of the Clean Air Act. Section 112 provides for the listing of pollutants which, in the judgment of the Administrators, cause or contribute to air pollution which may reasonably be anticipated to result in an

increase in mortality or an increase in serious irreversible, or incapacitating reversible illness. After a substance is listed as a hazardous air pollutant, EPA promulgates emissicn standards for the substance. EPA has, to date, listed seven substances (inorganic arsenic, asbestos, benzene, beryllium, mercury, radionuclides, and vinyl chloride) as hazardous air pollutants.

Emission standards for hazardous air pollutants promulgated under section 112 of the Clean Air Act are currently codified in 40 CFR Part 61. However, the pollutants designated as hazardous, although initially published in the **Federal Register**, are not codified in the Code of Federal Regulations. The potential exists for considerable uncertainty in the public sector as to the status of a specific pollutant with respect to section 112 during the period between listing and promulgation of emission standards for that pollutant.

In an effort to remove this uncertainty and to provide for expanded public accessibility to the list of air pollutants designated as hazardous, EPA is proposing to add to 40 CFR Part 61 the list of pollutants designated as hazardous pursuant to section 112. The list, in addition to identifying the hazardous air pollutants, will include a reference to the **Federal Register** in which the listing decision was originally published. This is expected to further facilitate public accessibility to the information relevant to the list of hazardous air pollutants. EPA is soliciting comments on this approach as well as any alternative approaches to codification of the list of hazardous air pollutants. The decisions to list these substances as hazardous air pollutants is not at question. The comments submitted in response to the amendment proposed today should be limited to the content and format of the codified list and should not address the basis for listing of the sevens substances as hazardous air pollutants.

Definitions

This proposal would amend three definitions presently in 40 CFR 61.02, would delete two definitions, and would add three new definitions.

The definition of "Act" would be amended by updating the citation to the United States Code (42 U.S.C. 7401 et seq.).

The definition of "standard" would be clarified to include design, equipment, work practice, and operational standards or combination thereof. This amendment stems from section 112(e) of the Clean Air Act which states that the Administrator may promulgate "a design, equipment, work practice, or operational standard, or combination thereof" when "it is not feasible to prescribe or enforce an emission standard." As a result of this amendment, general provisions that apply to emission standards would also be applicable to design, equipment, work practice or operational standards.

The definition of "modification" would be removed from Section 61.02 because the proposed § 61.15 of 40 CFR would define modification and describe the criteria and procedures for determining if a change to a source is a modification.

The term "equivalent method" would be removed from Part 61. In addition, the definition of "alternative method" would be amended by removing the reference to "equivalent method." In the present regulations, an equivalent method is a test method which has a consistent and quantitative relationship to the appropriate reference method contained in Appendix B of Part 61. An alternative method differs from an equivalent method in that, although it is adequate to determine compliance with an applicable standard in specific cases, it does not necessarily have a consistent and quantitative relationship to the reference method. No determinations on the equivalency of a test method have ever been made under NESHAP. It is unlikely that many determinations would be requested because development of sufficient data to demonstrate equivalency could be extremely difficult and yet the final analysis of the data could result in a determination that the method is not equivalent to the applicable reference method. A more reasonable approach would be to eliminate the concept of an equivalent method and to define all methods which are not reference methods but which may be used to determine compliance as alternative methods. Under the proposed definition, as under the definition in the present regulations, an alternative method could be approved either for a specific site or for all facilities, in which case it would be added to Appendix B of Part 61 and referenced in the appropriate standard. The Administrator would have the same authority that is presently in Part 61 to withdraw his approval of the alternative method, and require the use of a reference method.

Three new definitions would be added to § 61.02. A definition of "capital expenditure" would be added as a result of a proposed revision to an exemption to modification which is described in the discussion of modification which follows in this preamble. A definition of "run" would be added to clarify its usage as applied to emission testing. "Monitoring system" would be defined to specify the functions that the system for monitoring the emissions or related process parameters would be expected to perform.

Address

Section 112(d) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce the standards in Part 61. The present § 61.04 of 40 CFR states that all information required to be submitted to EPA under the standards in Part 61 must also be submitted to the appropriate State agency. The proposal would revise the section to state that EPA may permit the information to be submitted to the State agency only instead of to the State agency and to the EPA.

Application for Approval of Construction or Modification

Section 61.07 of 40 CFR would be revised to specify some information which is needed in the application for approval of modification. For construction and modification, the criterion for approval is that the new source will be able to meet the applicable standard. The proposed revisions would clarify the type of information the Administrator needs to evaluate an application. The application for approval of construction requires technical information describing the proposed nature, size, design, operating design capacity, method of operation of the source, and calculations of emissions estimates. The application for approval of modification would include some additional information, such as the precise nature of the proposed changes to the source, the productive capacities of the source before and after the changes, and calculations of estimates of emissions before and after the changes.

Notification of Startup

This proposal would add a paragraph to § 61.09 of 40 CFR which would state that the owner or operator may satisfy the requirements of this section by submitting to the Administrator a copy of a notification of startup sent to a State or local agency if the notification contains all the information as the one required by this section. The proposed provision is intended to clarify that owners or operators do not have to prepare two separate, but similar, notifications.

Source Reporting and Request for Waiver of Compliance

This proposal would amend § 61.10 of 40 CFR by substituting the word "change" for the word "modification" when preceded by the word "process" throughout paragraph (b) of the section. In this paragraph, the word "modification" is not used as defined in the proposed § 61.15; the word "change" would be substituted to avoid possible misinterpretation.

Compliance with Standards and Maintenance Requirements

The proposal would add a new section to Subpart A of 40 CFR Part 61 which would be § 61.12. It would be added to clarify the basis for determining compliance with a standard and the responsibilities of an owner or operator to maintain and operate the source using good practice for air pollution control. The basis for the operation and maintenance requirements in § 61.12(c) is sections 302(k) and 112(e)(1) of the Clean Air Act. Compliance with numerical emission limits would be determined by emission tests or as otherwise specified in the applicable standard; compliance with design, equipment, work practice or operational standards would be determined as specified in the applicable standard.

The proposed section would also provide the owner or operator of a source with the opportunity to obtain permission to use alternative equipment or procedures to comply with a design, equipment, work practice, or operational standard. The authority for these provisions is section 112(e)(3) of the Clean Air Act, which states that the Administrator shall permit the use of an alternative means of controlling emissions for compliance with a design, equipment, work practice or operational standard if, after notice and opportunity for public hearing, any person establishes to the Administrator's satisfaction that the alternative means will achieve a reduction in emissions at least equivalent to that achieved under the applicable standard. The section would outline the steps that would be followed in granting such permission. Any person may submit a written application requesting such permission. Unless the subpart for the applicable standard specified otherwise, the application would include proposed test plans, or the results of testing or monitoring. In addition, it would include descriptions of procedures followed and pertinent conditions during testing or monitoring. Any permission granted would be published in the **Federal Register** after notice and opportunity for public hearing.

Emission Tests and Waiver of Emission Tests

This proposal would combine the sections in the present Subpart A of 40 CFR Part 61 which relate to emission tests (§ 61.12) and waiver of emission tests (§ 61.13) into one section, which would be § 61.13. In addition, parts of the present section on source tests and analytical methods (§ 61.14) would be included in the proposed § 61.13. The reason for proposing their combination is that the contents of the sections are closely related and combining them would leave more numerical designations available for appropriately locating new sections.

The proposed amendments would incorporate several requirements for emission tests which are presently located only in the subparts of the standards into this section in the General Provisions to eliminate the need to repeat them in the subparts of future standards. The first of these requirements would be that the owner or operator of each existing source or each new source which started up before the effective date of the standard test emissions within 90 days after the effective date, and the owner or operator of each new source which started up after the effective date test emissions within 90 days after the startup date. The second would be that the owner or operator notify the Administrator of the date of the emission test at least 30 days before the test to allow the Administrator an opportunity to have an observer present during the test. The third would require that the emissions be determined within 30 days after each emission test and reported to the Administrator. This requirement would be to ensure that the test data is analyzed and results are reported in a timely manner. The fourth would require that records of emission test results and other data needed to determine emissions be kept at the source for at least 2 years and made available, upon request, for inspection by the Administrator.

This proposal would also add to this section two provisions for emission testing that are not in each of the standards. One would state the Administrator's authority to require an owner or operator to conduct an emission test at any time, as authorized by section 114 of the Clean Air Act. The other provision would require that the emission test be conducted under conditions specified by the Administrator. The Administrator will base his specifications on the design and operating characteristics of the source.

The provisions under the proposed paragraph (h) of this section, which relate to the use of alternative methods for testing emissions, are in § 61.14(c) of the present General Provisions and § 61.67(g) of the vinyl chloride standard in 40 CFR Part 61. They would be amended to include requirements for the date by which requests to use alternative methods during the initial emission tests are due to the Administrator. The purpose of these requirements is to ensure that the Administrator has ample time to evaluate the alternative method and notify the owner or operator of his evaluation before the deadline for conducting the initial emission test.

Source Test and Analytical Methods

The subpart of the General Provisions of 40 CFR Part 61 originally applied only to national emission standards for asbestos, beryllium and mercury. These were the only emission standards for hazardous air pollutants which had been promulgated. Reference test methods and alternative test methods required in § 61.14 of the General Provisions, titled "Source Test and Analytical Methods," are specific to beryllium and mercury. With the addition of standards for vinyl chloride and future regulations under this part, the provisions of this section are no longer appropriate to the General Provisions. Consequently, this proposal would delete this section from Subpart A and redesignate the provisions to the subparts of the applicable standards.

Monitoring Requirements

This proposal would add a section on monitoring of emissions, to be designated § 61.14, to the subpart of the General Provisions in 40 CFR Part 61. This section would apply only to standards in which monitoring is required. Monitoring is required in the vinyl chloride standard and monitoring requirements are anticipated to be in future regulations. Because hazardous air pollutants and processes causing their emissions vary widely, monitoring systems may vary widely. The system may measure emissions or other process parameters, or may observe conditions which indicate the control of air pollution; measurements or observations may be gathered and recorded by equipment or manually. Consequently, a monitoring system would be broadly defined as the system required by an applicable regulation used to sample, to analyze, and to provide a record of emissions or process parameters.

The section would state that the owner or operator shall operate the monitoring system as specified in the applicable standard and would outline the type of information that the Administrator would use to determine whether acceptable operation and maintenance procedures are in use. An owner or operator may be required to evaluate the performance of the monitoring system and report the results to the Administrator. The evaluation would help to determine the effectiveness and limits of the system at a particular source. The proposed section would require that records of monitoring data, monitoring system calibration checks, and the occurrence of malfunctions of the monitoring system be maintained at the source for at least 2 years and made available, upon request, for inspection by the Administrator. The owner or operator of a source would be allowed the flexibility to use alternative monitoring procedurs that are approved by the Administrator on a case-by-case basis.

Modification

Section 112 of the Clean Air Act defines a new source as a stationary source, the construction or modification of which commenced after the date of the proposal of a standard that would be applicable to the source. Sections 112 and 111 then define modification as a physical or operational change to a stationary source which results in an increase in emissions. The present Subpart A of Part 61 of 40 CFR repeats the definition of modification as it is found in section 112 of the Act and describes some changes which, by themselves, are not considered modification by the Administrator. However, it does not describe the criteria by which the Administrator will determine whether a proposed change constitutes a modification or describe the data needed by the Administrator to make a determination. Detailed criteria and procedures for determining modification have not been needed because few requests for determination and approval of modification are expected under the standards that are presently in Part 61. In these standards, new and existing sources are subject to the same emission limits. The only difference in the standards for new and existing sources is the time by which a source must comply with the standard. An existing source may request a waiver of compliance for up to 2 years after the effective date of the standard if it is unable to comply within 90 days after the effective date. New sources are not eligible for waivers. Consequently, at present, modification mainly affects existing sources operating under a waiver of compliance. If one is modified, it becomes a new source and must comply with the standard upon startup after the physical or operational change. However, consideration is given to setting separate standards for new and existing sources during the standard-setting process. This proposal would add a new Section 61.15 to Subpart A that would clarify the criteria and procedures to be used by an owner or operator of a source and the Administrator in determining whether a physical or operational change constitutes modification.

The proposed procedures are largely drawn from those for modification as it applies to new source performance standards, which comprise Part 60 of 40 CFR. The Congressional authorities for new source performance standards (section 111 of the Clean Air Act) and for national emission standards for hazardous air pollutants (section 112 of the Clean Air Act) have strong similarities. In both sections, modification has the same definition and the same basic intent—to require a stationary source which has increased the amount of its emissions as a result of a physical or operational change to meet the emission standards for new sources. Therefore, the Administrator would generally use the same criteria for determining modification for sources subject to Part 61 as were proposed and promulgated for Part 60.

The amount of emissions from a source would be determined by the rate of emissions to the atmosphere, expressed in kg/hour, as it is in Part 60. The emission rate would be determined by emission factors. If the use of emission factors does not demonstrate to the satisfaction of the Administrator that the emission rate will clearly increase or not increase as a result of the change to the source, the emission rate would be determined by material balances, continuous monitoring data, or manual emission tests. If manual emission tests are used to determine the emission rate, the Student's t test in Appendix C of Part 60 would be used to statistically analyze whether the emission rate was greater after the change than before.

The proposed section on modification would list several physical or operational changes which, by themselves, would not be considered modifications by the Administrator. Several of these clarify the Administrator's intent to not include as modifications changes that are within normal fluctuations in the operation of the source. Three are presently in Part 61 under the definition of modifications in § 61.02; they are (1) routine maintenance, repair, and replacement of components of the source, (2) increase in the hours of operation of the source, and (3) an increase in the production rate if it does not exceed the operating design capacity of the source. The term "operating design capacity" is difficult to define, and for some industries the design capacity bears little relationship to the actual operating capacity of the source. Therefore, the Agency proposes to make the exemption for production rate increases less vague by using capital expenditure as a criterion instead of operating design capacity. An increase in the production rate without a capital expenditure would not be considered a modification. The proposed exemption does not change the intent of the present exemption. If the increase in production rate is within the normal fluctuation or operating design capacity of the source, it is unlikely that a significant expenditure of capital would be needed to achieve the increase. Conversely, if the source is being changed to increase its production rate beyond what it is presently designed to operate at, a significant expenditure of capital would likely be necessary. The proposed revision is consistent with the revision to the same exemption to modification in Part 60 that was made in 40 FR 58416 for similar reasons.

This proposal would add two new exemptions to modification. The Administrator would not consider either a relocation or change in ownership of a stationary source, by itself, a physical or operational change and consequently would not determine either to be a modification. This exemption would not be a change in the Administrator's present policy of determining modification. Neither relocation nor change in ownership, by itself, would increase emissions. Consequently, even without the exemption, neither would be considered a modification. The exemption was added to Part 60 to clarify the policy after owners of sources questioned whether such changes would be modifications; it would be included here for the same reason. The second new exemption would be the conversion of a source to coal if the conversion is required for the energy considerations specified in section 111(a)(8) of the Clean Air Act. This exemption is required by law for national emission standards for hazardous air pollutants as well as for new source performance standards because section 112(a) of the Act states

that modification shall have the same meaning as in section 111(a) of the Act.

One exemption to modification in Part 60 would not be included in the modification provisions for Part 61. In Part 60, an increase in emission caused only by the use of an alternative fuel or raw material is exempted from modification if, before the effective date of the standard, the existing facility was designed to accommodate that alternative fuel or raw material. If, as a result of using a different fuel or raw material, a source begins to emit a hazardous pollutant which it had not previously emitted, it may be reasonable to require the source to control the emissions to the extent required for new sources.

State Authority

This proposal would amend the section on state authority, which is presently § 61.16 of 40 CFR and would be redesignated as § 61.17. The amendments would delete the phrase "other than a stationary source owned or operated by the United States" from paragraph (a)(2). The amendment stems from the amendment to section 118(a) of the Clean Air Act enacted in 1977 by Pub. L. 95–95.

Miscellaneous Amendments

Several sections in Subpart A of 40 CFR Part 61 would be redesignated as the result of the proposed addition of several new sections and an interest in grouping the sections logically.

This proposal would amend several sections for wording and punctuation. The wording changes would simplify and clarify the text. For example, "under" would be used instead of "pursuant to," "before" instead of "prior to," "to determine" instead of "to make a determination," and "applies" instead of "is applicable to." Redundant phrases such as "pursuant to the provisions of this part" would be deleted. The appearance of this phrase throughout the General Provisions is redundant because the applicability of the entire subpart is defined in § 61.01. Punctuation corrections would primarily involve the use of colons and dashes in introductory sentences and would follow the "U.S. Government Printing Office Style Manual."

Public Hearing

In accordance with section 307(d)(5) of the Clean Air Act, a public hearing will be held, if requested, to discuss the proposed amendments. Persons wishing to make oral presentations should contact EPA at the address given in the Addresses section of this preamble. Oral presentations will be limited to 15 minutes each.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow members of the public and industries involves to identify and locate documents so they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

Major Rule Determination

Under Executive Order 12291, EPA is required to judge whether a regulation is a "Major rule" and therefore subject to certain requirements of the Order. The Agency has determined that this regulation would result in none of the adverse econimic effects set forth in Section 1 of the Order as grounds for finding the regulation to be a "major rule." In fact, this action would impose no new regulatory requirements for owners or operators of sources to which a standard under Part 61 is applicable. The Agency has therefore concluded that this regulation is not a "major rule" under Executive Order 12291.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments for OMB to EPA and any EPA response to these comments are included in Docket Number A–81–12.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. *et. seq.* and has assigned the following OMB control numbers: 2000–0248 (Application for approval of construction or modification), 2000–0249 (Notification of startup), 2000–0250 (Waiver of Compliance).

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

Regulatory Flexibility Analysis Certification

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed amendments to Part 61 will not, if promulgated, have a significant economic impact on a substantial number of small entities. The amendments will not add any new regulatory requirements to Part 61. Consequently, they will not add significant costs to compliance with national emission standards for hazardous air pollutants.

List of Subjects in 49 CFR Part 61

Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

Dated: May 23, 1984.

William D. Ruckelshaus,

Administrator.

It is proposed to amend 40 CFR Part 61 as follows:

1. The table of contents is amended by revising the table of contents for Subpart A and the authority citation to read as follows:

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Subpart A.—General Provisions

Sec.

61.01 List of hazardous air pollutants and applicability of Part 61.
61.02 Definitions.
61.03 Units and abbreviations.
61.04 Address.
61.05 Prohibited activities.
61.06 Determination of construction or modification.
61.07 Application for approval of construction or modification.
61.08 Approval of construction or modification.
61.09 Notification of startup.
61.10 Source reporting and request for waiver of compliance.
61.11 Waiver of compliance.
61.12 Compliance with standards and maintenance requirements.
61.13 Emission tests and waiver of emission tests.
61.14 Monitoring requirements.
61.15 Modification.
61.16 Availability of information.
61.17 State authority.
61.18 Incorporations by reference.
61.19 Circumvention.

* * * * *

Authority: Sec. 112, 301(a), Clean Air Act as amended (42 U.S.C. 7412, 7601(a)), and additional authority as noted.

2. Section 61.01 is revised to read as follows:

§ 6101 List of hazardous air pollutants and applicability of Part 61.

(a) The following list presents the substances that, pursuant to section 112 of the Act, have been designated as hazardous air pollutants.

The **Federal Register** citations and dates refer to the publication in which the listing decision was originally published:

Asbestos (36 FR 5931; March 31, 1971)
Benzene (42 FR 29332; June 8, 1977)
Beryllium (36 FR 5931; March 31, 1971)
Inorganic Arsenic (45 FR 37886; June 5, 1980)
Mercury (36 FR 5931; March 31, 1971)
Radionuclides (44 FR 76738; December 27, 1979)
Vinyl Chloride (40 FR 59532; December 24, 1975)

(b) This part applies to the owner or operator of any stationary source for which a standard is prescribed under this part.

3. Section 61.02 is amended by removing the definition of "equivalent method" and "modification"; by correcting the definition of "Act"; by revising the definitions for "alternative method" and "standard"; and by adding definitions of "capital expenditure", "monitoring system", and "run". The revised and new definitions will read as follows:

§ 61.002 Definitions.

* * * * *

"Act" means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference method but which has been demonstrated to the Administrator's satisfaction to produce, in specific cases, results adequate for this determination of compliance.

* * * * *

"Capital expenditure" means an expenditure for a physical or operational change to a stationary source which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the latest edition of Internal Revenue Service (IRS) Publication 534 and the stationary source's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to a stationary source must not be reduced by any "excluded additions" as defined in IRS Publication 534.

* * * * *

"Monitoring system" means any system, required under the monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a record of emissions or process parameters.

"Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Standard" means a national emission standard including a design, equipment, work practice or operational standard for a hazardous air pollutant proposed or promulgated under this part.

* * * * *

4. Section 61.04 is amended by revising paragraph (b) introductory text to read as follow:

§ 61.04 Address.

* * * * *

(b) Section 112(d) directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce national emission standards for hazardous air pollutants for stationary sources located in such State. If the authority to implement and enforce a standard under this part has been delegated to a State, all information required to be submitted to EPA under paragraph (a) of this section shall also be submitted to the appropriate State agency (provided, that each specific delegation may exempt sources from a certain Federal or State reporting requirement). EPA may permit all or some of the information to be submitted to be appropriate State agency only, instead of to EPA and the State agency. The appropriate mailing address for those States whose delegation request has been approved is as follows:

* * * * *

5. Section 61.05 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 61.05 Prohibited activities.

(a) After the effective date of any standard, no owner or operator shall construct or modify any stationary source subject to the standard without first obtaining written approval from the Administrator in accordance with this subpart, except under an exemption granted by the President under section 112 (c)(2) of the Act. Sources, the construction or modification of which commenced after the publication date of the standards proposed to be applicable to the sources, are subject to this prohibition.

(b) After the effective date of any standard, no owner or operator shall operate a new stationary source subject to that standard in violation of the standard, except under an exemption granted by the President under section 112(c)(2) of the Act.

(c) Ninety days after the effective date of any standard, no owner or operator shall operate any existing source subject to that standards in violation of the standard, except under a waiver granted by the Administrator under this part or under an exemption granted by the President under section 112(c)(2) of the Act.

* * * * *

6. Section 61.06 is amended by revising the text to read as follows:

§ 61.06 Determination of construction or modification.

An owner or operator may submit to the Administrator a written application for a determination of whether actions intended to be taken by the owner or operator constitute construction or modification of a source subject to a standard or the commencement thereof. The Administrator will notify the owner or operator of his determination within 30 days after receiving sufficient information to evaluate the application.

7. In § 61.07 paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

§ 61.07 Application for approval of construction or modification.

(a) The owner or operator shall submit to the Administrator an application for approval of the construction of any new source or modification of any existing source. The application shall be submitted before the construction or modification is planned to commence, or within 30 days after the effective date if the construction or modification had commenced before the effective date and initial startup has not occurred. A separate application shall be submitted for each stationary source.

(b) Each application for approval of construction shall include—

(1) The name and address of the applicant;

(2) The location or proposed location of the source; and

(3) Technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of any equipment to be used for control of emissions. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(c) Each application for approval of modification shall include, in addition to the information required in paragraph (b) of this section,—

(1) The precise nature of the proposed changes;

(2) The productive capacity of the source before and after the changes are completed; and

(3) Calculations of estimates of emissions before and after the changes are completed, in sufficient detail to permit assessment of the validity of the calculations.

8. Section 61.08 is revised to read as follows:

§ 61.08 Approval of construction or modification.

(a) The Administrator will notify the owner or operator of approval or intention to deny approval of construction or modification within 60 days after receipt of sufficient information to evaluate an application under § 61.07.

(b) If the Administrator determines that a stationary source for which an application under § 61.07 was submitted will not cause emissions in violation of a standard if properly operated, he will approved the construction or modification.

(c) Before denying any application for approval of construction or modification, the Administrator will notify the applicant of the Administrator's intention to issue the denial with—

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the applicant to present, within such time limit as the Administrator shall specify, additional information or arguments to the Administrator before final action on the application.

(d) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 days of presentation of additional information or arguments, or 60 days after the final date specified for presentation if no presentation is made.

(e) Neither the submission of an application for approval nor the Administrator's approval of construction or modification shall—

(1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or of any other applicable Federal, State, or local requirement; nor

(2) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

9. Section 61.09 is revised to read as follows:

§ 61.09 Notification of startup.

(a) The owner or operator of each stationary source which has an initial startup after the effective date of a standard shall furnish the Administrator with written notification as follows:

(1) A notification of the anticipated date of initial startup of the source not more than 60 days nor less than 30 days before that date.

(2) A notification of the actual date of initial startup of the source within 15 days after that date.

(b) If any State or local agency requires a notice which contains all the information required in the notification in paragraph (a) of this section, sending the Administrator a copy of that notification will satisfy paragraph (a) of this section.

(Section 114, Clean Air Act as amended (42 U.S.C. 7414))

10. Section 61.10(a)(4), (6) and (7), introductory paragraph (b), (b)(2)(i) and (iii), (c) and (d) are revised to read as follows:

§ 61.10 Source reporting and request for waiver of compliance.

(a) The owner or operator of each existing source or each new source which had an initial startup before the effective date shall provide the following information in writing to the Administrator within 90 days after the effective date:

* * * * *

(4) A brief description of the nature, size, design, and method of operation of the stationary source including the operating design capacity of the source. Identify each point of emission for each hazardous pollutant.

* * * * *

(6) A description of the existing control equipment for each emission point including—

(i) Each control device for each hazardous pollutant; and

(ii) Estimated control efficiency (percent) for each control device.

(7) A statement by the owner or operator of the source as to whether the source can comply with the standards within 90 days after the effective date.

(b) The owner or operator of an existing source unable to comply with an applicable standard may request a waiver of compliance with that standard for a period not exceeding 2 years after the effective date. Any request shall be in writing and shall include the following information:

* * * * *

(2) A compliance schedule, including the date each step toward compliance will be reached. The list shall include as a minimum the following dates:

(i) Date by which contracts for emission control systems or process changes for emission control will be awarded, or date by which orders will be issued for the purchase of component parts to accomplish control or process changes;

* * * * *

(iii) Date by which onsite construction or installation of emission control equipment or process change is to be completed; and

* * * * *

(c) Any change in the information provided under paragraph (a) of this section shall be provided to the Administrator within 30 days after the change. However, if any change will result from modification of the source, § 61.07 and § 61.08 apply.

(d) A possible format for reporting under this section is included as Appendix A of this part. Advice on reporting the status of compliance may be obtained from the Administrator.

(Section 114, Clean Air Act as amended (42 U.S.C. 7414))

11. Section 61.11 is revised to read as follows:

§ 61.11 Waiver of compliance.

(a) Based on the information provided in any request under § 61.10, or other information, the Administrator may grant a waiver of compliance with a standard for a period not exceeding 2 years after the effective date of the standard.

(b) The waiver will be in writing and will—

(1) Identify the stationary source covered;

(2) Specify the termination date of the waiver;

(3) Specify dates by which steps toward compliance are to be taken; and

(4) Specify any additional conditions which the Administrator determines necessary to assure installation of the necessary controls within the waiver period and to assure protection of the health of persons during the waiver period.

(c) The Administrator may terminate the waiver at an earlier date than specified if any specification under paragraphs (b)(3) and (b)(4) of this section are not met.

(d) Before denying any request for a waiver, the Administrator will notify the owner or operator making the request of the Administrator's intention to issue the denial, together with—

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the owner or operator to present, within the time limit the Administrator specifies, additional information or arguments to the Administrator before final action on the request.

(e) A final determination to deny any request for a waiver will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 60

days after presentation of additional information or argument; or within 60 days after the final date specified for the presentation if no presentation is made.

(f) The granting of a waiver under this section shall not abrogate the Administrator's authority under Section 114 of the Act.

12. Section 61.12 is revised to read as follows:

§ 61.12 Compliance with standards and maintenance requirements.

(a) Compliance with numerical emission limits shall be determined by emission tests established in § 61.13 or as otherwise specified in an individual subpart.

(b) Compliance with design, equipment, work practice or operational standards shall be determined as specified in an individual subpart.

(c) The owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

(d)(1) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions of a pollutant from a source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice or operational standard, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with the standard. The notice will restirict the permission to the source(s) or category(ies) of sources on which the alternative means will achieve equivalent emission reductions. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(2) Any notice under paragraph 1 shall be published only after notice and an opportunity for a hearing.

(3) Any person seeking permission under this subsection shall, unless otherwise specified in the applicable subpart, submit a proposed test plan or the results of testing and monitoring, and description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

13. In § 61.13, "emission tests" is added to the heading and the section is revised to read as follows:

§ 61.13 Emission test and waiver of emission tests.

(a) If required to do emission testing by an applicable subpart and unless a waiver of emission testing is obtained under this section, the owner or operator shall test emissions from the source—

(1) Within 90 days after the effective date, for an existing source or a new source which has an initial startup date before the effective date; or

(2) Within 90 days after initial startup, for a new source which has an initial startup date after the effective date.

(b) The Administrator may require an owner or operator to test emissions from the source at any other time under Section 114 of the Act.

(c) The owner or operator shall notify the Administrator of the emission test at least 30 days before the emission test to allow the Administrator the opportunity to have an observer present during the test.

(d) The owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing source shall provide emission testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to each source.

(2) Safe sampling platform(s).

(3) Safe access to sampling platform(s).

(4) Utilities for sampling and testing equipment.

(5) Any other facilities that the Administrator needs to safely and properly test a source.

(e) Each emission test shall be conducted under such conditions as the Administrator shall specify based on design and operational characteristics of the source.

(f) Unless otherwise specified in an applicable subpart, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the Administrator by a registered letter sent before the close of business on the 31st day following the completion of the emission test.

(g) The owner or operator shall retain at the source and make available, upon request, for inspection by the Administrator, for a minimum of 2 years, records of emission test results and other data needed to determine emissions.

(h)(1) Emission tests shall be conducted as set forth in this section, the applicable subpart and Appendix B unless the Administrator—

(i) Approves the use of an alternative method, the results of which he has determined to be adequate for indicating whether a specific source is in compliance; or

(ii) Waives the requirement for emission testing because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the source is in compliance with the standard.

(2) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative method, he may require the use of a reference method. If the results of the reference and alternative methods do not agree, the results obtained by the reference method prevail, and the Administrator will notify the owner or operator that approval of the method previously considered to be alternative is withdrawn.

(3) For an existing source, any request for use of an alternative method during the initial emission test shall be submitted to the Administrator within 30 days after the effective date, unless a waiver of compliance has been granted under § 61.11.

(4) For a new source, any request for use of an alternative method during the initial emission test shall be submitted to the Administrator no later than with the notification of anticipated startup required under § 61.09.

(i)(1) Emission tests may be waived upon written application to the Administrator if, in his judgment, the source is meeting the standard, or the source is being operated under a waiver of compliance, or the owner or operator has requested a waiver of compliance and the Administrator is still considering that request.

(2) If application for waiver of the emission test is made, the application shall accompany the information required by § 61.10 or the notification of startup required by § 61.09, whichever is applicable. A possible format is contained in Appendix A to this part.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later cancelling the waiver. The cancellation will be made only after notice is given to the owner or operator of the source.

(Sec. 114. Clean Air Act as amended (42 U.S.C. 7414))

14. Section 61.14 is revised to read as follows:

§ 61.14 Monitoring requirements.

(a) Unless otherwise specified, this section applies to each monitoring system required under each subpart which requires monitoring.

(b) Each owner or operator shall maintain and operate each monitoring system as specified in the applicable subpart and in a manner consistent with good air pollution control practice for minimizing emissions. Any unavoidable breakdown or malfunction of the monitoring system should be repaired or adjusted as soon as practicable after its occurrence. The Administrator's determination of whether acceptable operating and maintenance procedures are being used will be based on information which may include, but not be limited to, review of operating and maintenance procedures, manufacturer recommendations and specifications, and inspection of the monitoring system.

(c) When required by the applicable subpart, and at any other time the Administrator may require, the owner or operator of a source being monitored shall conduct a performance evaluation of the monitoring system and furnish the Administrator with a copy of a written report of the results within 60 days of the evaluation. The performance evaluation shall be conducted according to the applicable specifications and procedures described in the applicable subpart. The owner or operator of the source shall furnish the Administrator with written notification of the date of the performance evaluation at least 30 days before the evaluation is to begin.

(d) When the effluents from a single source, or from two or more sources subject to the same emission standards, are combined before being released to the atmosphere, the owner or operator shall install a monitoring system on each effluent or on the combined effluent. If two or more sources are not subject to the same emission standards, the owner or operator shall install a separate monitoring system on each effluent, unless otherwise specified. If the applicable standard is a mass emission standard and the effluent from one source is released to the atmosphere through more than one point, the owner or operator shall install a monitoring system at each emission point unless the installation of fewer systems is approved by the Administrator.

(e) The owner or operator of each monitoring system shall reduce the monitoring data as specified in each applicable subpart. Monitoring data recorded during periods of unavoidable monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in any data average.

(f) The owner or operator shall maintain records of monitoring data, monitoring system calibration checks, and the occurrence and duration of any period during which the monitoring system is malfunctioning or inoperative. These records shall be maintained at the source for a minimum of 2 years and made available, upon request, for inspection by the Administrator.

(g) After receipt and consideration of a written application, the Administrator may approve alternatives to any monitoring procedures or requirements of this part.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 61.15 [Redesignated as § 61.16]

15. Section 61.15 is redesignated as § 61.16.

16. A new § 61.15 is added as follows:

§ 61.15 Modification

(a) Except as provided under paragraphs (d) and (e) of this section, any physical or operational change to a stationary source which results in an increase in the rate of emission to the atmosphere of a hazardous pollutant to which a standard applies shall be considered a modification.

(b) Upon modification, an existing source shall become a new source for each hazardous pollutant for which the rate of emission to the atmosphere increases and to which a standard applies.

(c) Emission rate shall be expressed as kg/hr of any hazardous pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine the emission rate:

(1) Emission factors as specified in the latest issue of "Compilation of Air Pollutant Emission Factors," EPA Publication No. AP–42, or other emission factors determined by the Administrator to be superior to AP–42 emission factors, in cases where use of emission factors demonstrates that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change.

(2) Material balances, monitoring data, or manual emission tests in cases where use of emission factors, as referenced in paragraph (c)(1) of this section, does not demonstrate to the Administrator's satisfaction that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change, or where an interested person demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator using emission factors. When the emission rate is based on results from manual emission tests or monitoring data, the procedures specified in Appendix C of 40 CFR Part 60 shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator. At least three test runs must be conducted before and at least three after the physical or operational change. If the Administrator approves, the results of the emission tests required in § 61.13(a) may be used for the test runs to be conducted before the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum degree feasible for all test runs.

(d) The following shall not, by themselves, be considered modifications under this part:

(1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category.

(2) An increase in production rate of a stationary source, if that increase can be accomplished without a capital expenditure on the stationary source.

(3) An increase in the hours of operation.

(4) Any conversion to coal that meets the requirements specified in section 111(a)(8) of the Act.

(5) The relocation or change in ownership of a stationary source.

17. Section 61.16 is redesignated as § 61.17 and is revised to read as follows:

§ 61.17 State authority.

(a) This part shall not be construed to preclude any State or political subdivision thereof from—

(1) Adopting and enforcing any emission limiting regulation applicable to a stationary source, provided that such emission limiting regulation is not less stringent than the standards prescribed under this part; or

(2) Requiring the owner or operator of a stationary source to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of the source.

(Sec. 116, Clean Air Act as amended (42 U.S.C. 7416))

18. Section 61.17 is redesignated as § 61.19 and the words "subject to the provisions of this part" are removed from the first sentence.

19. In § 61.33, introductory paragraph (a) is revised to read as follows:

§ 61.33 Stack sampling.

(a) Unless a waiver of emission testing is obtained under § 61.13, each owner or operator required to comply with § 61.32(a) shall test emissions from the source according to Method 104 of Appendix B to this part. Method 103 of Appendix B to this part is approved by the Administrator as an alternative method for sources subject to § 61.32(a). The emission test shall be performed—

* * * * *

20. In § 61.44, paragraph (a) is revised to read as follows:

§ 61.44 Stack sampling.

(a) Sources subject to § 61.42(b) shall be continuously sampled, during release of combustion products from the tank, according to Method 104 of Appendix B to this part. Method 103 of Appendix B to this part is approved by the Administrator as an alternative method for sources subject to § 61.42(b).

* * * * *

21. In § 61.53 an introductory paragraph is added to read as follows:

§ 61.53 Stack sampling.

Testing under this section shall be done according to Method 101 or Method 102, whichever is applicable.

* * * * *

§ 61.65 [Amended]

22. Section 61.65 is amended by removing the words "equivalent or" throughout paragraphs (b)(8) (i) and (c).

23. In § 61.67, paragraph (g) is revised by removing references to equivalent methods to read as follows:

§ 61.67 Emission tests.

* * * * *

(g) Unless otherwise specified, the owner or operator shall use Test Methods in Appendix B to this part for each test as required by paragraphs (g)(1), (g)(2), (g)(3), (g)(4), and (g)(5) of this section, unless an alternative method has been approved by the Administrator. If the Administrator finds reasonable grounds to dispute the results obtained by an alternative method, he may require the use of a reference method. If the results of the reference and alternative methods do not agree, the results obtained by the reference method prevail, and the Administrator may notify the owner or operator that approval of the method previously considered to be alternative is withdrawn.

* * * * *

§ 61.68 [Amended]

24. Section 61.68 is amended by removing the words "equivalent or" throughout paragraph (b).

§ 61.70 [Amended]

25. Section 61.70 is amended by removing the words "equivalent or" throughout paragraph (c).

Appendix A [Amended]

26. In Appendix A, paragraph (II)(B) is amended by replacing the words "of beryllium or mercury pollutants" with the words "subject to emission testing."

Appendix B [Amended]

27. In Method 103 of Appendix B, paragraph 1.2 is amended by removing the words "as specified under the provisions of § 61.14 of the regulations."

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Part VII

Department of Housing and Urban Development

24 CFR Parts 200, 203, 220, 221, 234, and 235

Insurance of Adjustable Rate Mortgages; Interim Rule

24 CFR Part 390

Securitization of Adjustable Payment Mortgages; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 220, 221, 234, and 235

[Docket No. R-84-1155; FR-1916]

Insurance of Adjustable Rate Mortgages

AGENCY: Office of the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides for the insurance of Adjustable Rate Mortgages (ARMs) covering certain one- to four-family dwellings under section 203 of the National Housing Act (the Act), and one-family condominium units under section 234(c) of the Act.

An ARM (also known as a variable rate mortgage) contains terms that permit a mortgagee periodically to adjust the effective rate of interest charged for the mortgage loan. Such adjustments correspond to changes in an interest rate index. Consequently, this instrument offers lenders or investors a measure of protection not available in level payment, fixed-rate mortgages during periods when frequent interest rate changes present other, more attractive investments. In essence, the mortgagee is assured of a competitive rate of return on his or her investment. Because investment risks are reduced through the use of an ARM, the mortgagee is ordinarily able to offer a prospective homeowner an initial mortgage interest rate below the rates associated with level payment, fixed rate mortgages. Accordingly, use of ARMs has grown steadily over the past few years, and has facilitated the financing of homes for many purchasers.

The interim regulation is designed to remove some of the risks to mortgagors associated with the use of an ARM. For example, the rule implements statutory provisions that require adjustments to be made annually, limits the size of any single interest rate increase and stipulates the total increase that can be made above the initial contract interest rate over the term of the mortgage. The rule precludes the possibility of negative amortization (i.e., that the size of the mortgagor's outstanding principal balance may increase from one year to the next). Also, a mortgagee is required to explain, fully and in writing, the features of the ARM to a prospective mortgagor.

Demand for alternatives to level payment, fixed rate mortgages has risen in recent years. This interim regulation provides one alternative that should increase homeownership affordability and also encourage continued investment in housing. In order to make the benefits of the ARM program immediately available to the public, the Department has decided to issue this regulation as an interim rule.

DATES: Effective Date: July 30, 1984. Comment Due Date: Comments must be received by August 6, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Single Family Development Division, Room 9270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983 (1983 Act), contains provisions authorizing the Department to insure various kinds of mortgage instruments which do not provide for fixed rate, level payments. This interim rule implements the new legislation with respect to adjustable rate mortgages for certain single-family dwellings.

Section 443 of the 1983 Act amends Title II of the National Housing Act (NHA) by adding a new section 251 which, subject to express limitations, authorizes the Secretary to insure adjustable rate mortgages. The insurance authorization is limited to one- to four-family dwellings. The statute empowers the Secretary to prescribe rules that would permit a mortgagee to make periodic changes in the effective rate of interest charged, by means of adjustments to monthly payments, to outstanding principal balances, to the mortgage term (although the full term cannot exceed 40 years), or through a combination of these factors. Adjustments must correspond to interest rate changes depicted in a specified national interest rate index, information about which is published and readily available. Adjustments must be made annually, with any single increase limited to no more than one percentage point on the outstanding principal balance, and further limited to a maximum of five percentage points above the initial contract interest rate over the term of the mortgage. The statute also requires a mortgagee, at the time of loan application, to provide the mortgagor with a written explanation of the mortgage's features, including a hypothetical "worst-case" monthly payment schedule over the first 5 years of the mortgage term. Finally, the statute imposes a limit on the number of ARMs that may be insured by the Department in any given fiscal year.

The Department's interim regulation for the insuring of ARMs, discussed at length in succeeding paragraphs of this preamble, comports with the above-described legislative amendments. This rule, which is designed to facilitate purchases of homes and to encourage investment in the housing industry, also reflects some of the more favorable marketing trends related to the current use of these instruments.

II. Major features of the ARM Program

ARMs will be insured under section 203(b) of the NHA (HUD's basic home mortgage insurance authority), 203(k) (rehabilitation loans), or section 234(c) (single family condominium units). With respect to mortgage limits, the principal obligation of the mortgage cannot exceed the limits currently applicable to these programs.

Notwithstanding the growing popularity of adjustable rate mortgages in the housing industry, the widespread use of ARMs is a fairly new phenomenon. Interest rates charged and indices used for measuring changes in rates have varied widely. The degree of risk, both to mortgagees and mortgagors, associated with the use of this type of mortgage instrument continues to be a matter of some controversy. For these reasons, the Department's interim rule limits the ARM program to the kinds of single-family dwellings identified above, and furthermore, to owner-occupants only. Comment is invited, however, concerning whether the insurance program should be expanded to include other HUD single-family insuring authorities.

III. The Interest Rate Index

a. *Selection of index:* The Department will use the "weekly average yield on United States Treasury securities adjusted to a constant maturity of one year" (also referred to as "One Year Treasury Constant Maturities") as the

interest rate index for its ARM insurance program. Weekly average yields are published in the *Federal Reserve Bulletin* and are made available by the Federal Reserve Board in Statistical Release H. 15 (519).

This interest rate index is a national index, and information on the index is easily obtainable by interested parties. Anyone can ask to be placed on the United States Treasury Department's mailing list for receipt of the weekly H. 15 publication. Currently, there is no charge for this service.

The interest rate index is one of a number maintained by the Treasury Department. Interest rate indices are adjusted to maturities ranging from 1 to 30 years. In light of the legislative (and regulatory) limitations placed on insured ARM adjustments (including the requirement that adjustments occur annually), it appears that use of the interest rate yield adjusted to a constant maturity of one year will best serve the purpose of the Department's program.

A May 14, 1982 issuance of the Federal Reserve Board provides information about how constant maturity yield curves are constructed. The following two paragraphs are extracted from that issuance.

Yields on Treasury securities at constant maturity are constructed by the Treasury Department, based on the most actively traded marketable Treasury securities. To obtain these yields, personnel at the Treasury Department construct a yield curve each day, and yield values are then read from the curve at fixed maturities—presently 1, 2, 3, 5, 7, 10, 20, and 30 years. By this technique, a yield may be estimated for, say, the 5-year maturity, even if no outstanding marketable Treasury issue currently has exactly 5 years remaining to maturity. (Note: The yield curves constructed by the Treasury Department are used as a basic input, along with other market data, in estimating the yield the Treasury would have to pay if it sold a new marketable security of given maturity.)

To construct a yield curve for any given day, the Treasury Department first plots the closing market bid yields of outstanding Treasury securities on a graph. (These yields are based on composite quotes reported by five U.S. Government securities dealers to the Federal Reserve Bank of New York.) The horizontal axis of the graph shows the maturity date of each security, and the vertical scale measures the yield. A single, continuous yield curve is then drawn, either by hand or by computer, through the plotted points, with by far the heaviest weight given to a limited number of the most recently issued, actively traded Treasury bills, notes and bonds.

Note.—Bill rates are first converted to an investment (coupon equivalent) yield basis. In particular, virtually no weight is given to the low-coupon, deep discount Treasury bonds commonly known as "flower" bonds.

b. *Use of the interest rate index:* An ARM would contain an initial contract interest rate agreed upon by the mortgagee and the mortgagor. It is this interest rate that would be subject to periodic adjustments (within the limits prescribed by the Department's regulation). By statute, the adjustment must occur on an annual basis for ARMs insured by the Department. Each adjustment would correspond to the change in the interest rate index.

There appear to be two basic methods for calculating adjustments in ARM contracts. The Department's regulation is designed to accommodate either method, each of which is described below.

Under the first method, the mortgagee and mortgagor agree upon an initial contract interest rate, which is typically somewhat lower than prevailing interest rates associated with fixed term, level payment mortgages. A base index value is selected for the purpose of later determining the size of each adjustment. To determine the new interest rate, the mortgagee calculates the change between the base index figure and the "current" index figure (i.e., the index figure at the time of the adjustment). The difference between the two index figures is then added to or subtracted from the initial contract interest rate.

For example, assume that an ARM contains an initial contract interest rate of 11 percent, and that the initial index figure is 10 percent. Assume further that one year later the (current) index interest rate is 10.5 percent. The difference (10.5—10) is one-half of one percent. This difference is added to the initial contract rate for the next twelve month period. The mortgagor's monthly payment schedule for this period is determined by calculating, at the new interest rate (11.5 percent in this example) the amount of payment necessary to repay the outstanding principal balance over the remaining term of the mortgage.

Using these same basic assumptions, if the index interest rate for 1 year had decreased to 9.5 percent over the one-year period, the initial contract interest rate would also decrease by one-half of a percent, to 10.5 percent.

Under the second method, the mortgagee and mortgagor negotiate an initial contract rate and a specified percentage or "margin." At each adjustment, the new mortgage interest rate will be the composite of the current index interest rate figure and the specified margin. For example, assume again that the negotiated contract interest rate is 11 percent and the margin is one percentage point. A year later the "current" index interest rate figure is 10.5 percent. The new interest rate, for the next twelve-month period, becomes 11.5 percent (the current index figure plus the one percent margin). If the index figure had decreased to 9.5 percent, the adjusted, new interest rate would become 10.5 percent (the one percent "margin" over the current index value of 9.5 percent).

IV. Frequency and Magnitude of Adjustments

Under the Department's interim rule, adjustments to the mortgage interest rate must be made annually, and increases could not exceed one percentage point a year, or 5 percentage points above the initial contract interest rate over the term of the mortgage. These provisions comport with the governing legislation (section 251 of the NHA) and safeguard mortgagors against the possibility of severe interest rate increases during the term of the mortgage.

The regulation would permit mortgagees to make the initial adjustment to a mortgagor's monthly payment no sooner than 12 months, nor later than 18 months, from the date on which the mortgagor makes the initial debt service payment under the mortgage. This provision is designed to facilitiate the pooling of individual mortgage loans, for sales in secondary markets. The prescribed 6-month "window" provides mortgagees with sufficient flexibility for this purpose, while assuring that each initial adjustment must occur within a finite time period. Once this initial adjustment is made, annual adjustments would occur on the anniversary date of the initial adjustment. For the purpose of establishing each interest rate adjustment that is needed under the first adjustment method described above (i.e. the method that does *not* employ the use of a margin), the initial or "base" index interest rate value selected would be the one most recently available at the time of the mortgage loan origination. The "current" index figure, that is needed to compute an adjustment whether a margin is employed or not, would be the index figure most recently available 30 days before the effective date of each annual adjustment.

Under the Department's interim rule, adjustments to insured ARMs corresponding to changes in interest rates will only be permitted to a mortgagor's monthly payment amounts. This will preclude the possibility of negative amortization, ensure that the mortgage obligation is paid within the established mortgage term, and facilitate a mortgagor's understanding of the

obligation he or she will undertake. The use of negative amortization (where a loan balance is increased because the mortgagor's monthly payments are inadequate to cover the interest due) poses concerns to mortgagors, and to the Department as an insurer. It results in the mortgagor's having, later on, to make greater payments to offset a larger loan balance, and it increases the Department's exposure as an insurer. Similarly, permitting an ARM contract to contain provisions for extending a mortgage term would result in a mortgagor's having to bear a larger loan obligation while extending the Department's insurance exposure beyond the ordinary mortgage term. The Department will consider the use of negative amortization provisions under a separate proposal covering indexed mortgages recently published in the **Federal Register** of June 4, 1984. In that proceeding, the Department will consider adequate safeguards to balance the interests of mortgagors, lenders and the government.

On the other hand, this interim regulation limits the size of interest rate decreases for any given year, as well as the maximum decrease below the initial contract rate of the mortgage. These provisions provide lenders and investors with protections against erratic downward shifts in interest rates. The allowable limits parallel those being imposed for the benefit of mortgagors.

The interim rule will not permit mortgagees to waive the making of an adjustment up to the annual ceiling on increases or down to the annual floor on decreases, in any year—*with one exception.* The regulation will allow an ARM to contain a provision requiring that interest rate changes in the index must exceed a specified minimum change if the change is to be applied to the mortgage interest rate, and further permitting minimum increments of interest rate changes. For example, an ARM could provide that if the change is less than one-eighth of one percent, the change would be automatically rounded to zero. If the change exceeds one-eighth of one percent, the amount of change would be rounded (upward or downward) to the nearest one-eighth of one percent. This provision is in the rule for the sake of expediency and comports with widespread current industry practice. As a practical matter, a requirement that interest rate changes that are of a "de minimis" nature must be translated into mortgage interest rate adjustments would appear to create an undue administrative burden.

The interim rule also provides for the mandatory carryover of changes in the index that, because of annual ceiling limitations prescribed in the rule, cannot immediately be translated into changes in the contract interest rate. Thus, in any year in which the change in the index value is greater than one percentage point (whether an increase or decrease in the interest rate), the change, to the extent that it exceeds the one percentage point ceiling limitation on any annual adjustment, must be applied to the contract interest rate at the next scheduled adjustment date: (1) If no change occurs in the index interest-rate value; or (2) to supplement an index value change in the same direction that is less than one-percent; or (3) to offset any index value change in the opposite direction. If it is not possible to apply all or a part of the deferred interest rate change at the next scheduled adjustment date (because, for example, the next subsequent index value change is in the same direction and is greater than one-percentage point), the deferred interest (including the following year's change above one-percent) must be carried over to the next adjustment date (or dates) that make possible its application.

For example, assume again that a mortgage contains a contract interest rate of 11 percent, and employs a margin of 1.0 percent for the purpose of making annual interest rate adjustments. Assume further that at the time of the first adjustment, the index value has increased from 10 to 12 percent. Because of the annual one percentage point ceiling on adjustments to the contract interest rate, the contract rate would be adjusted by one percentage point. However, the unapplied one-percentage point change (increase) in the index value would be applied in whole or part (as permitted) to the contract interest rate at the next scheduled adjustment. For example, assume that at the second adjustment date, the index value did not change, but remained at 12 percent. The mortgage contract rate would again increase by one percentage point, in order to pick up the remaining one percentage point increase based on the performance of the index in the first year. If *instead,* the index value had increased by one-half of one percentage point, the contract rate would still increase by one percentage point (because the increase is supplemented to the extent possible by the deferred change), *and* the still unused one-half of one percentage point change would be carried over to the next scheduled adjustment date possible for its application. *If instead,* the index value of this example had decreased by one percentage point at the time of the second adjustment, the contract interest rate would remain the same (12 percent), because of the offset. If the index value decreased by more than one percentage point the change could be applied to the extent that the contract rate does not decrease by more than one-percent. Any unapplied change (decrease) would be applied in the same manner at the next adjustment date possible for its application. Finally, if in this example the index value had changed by two percentage points in each of the first two years, the contract interest rate would have been adjusted by one percent each year, and the cumulative unapplied interest change of two percentage points would be applied, insofar as permissible under the rule, at the next adjustment date(s).

Under this provision of the rule the carryover of unapplied interest rate changes can result in an annual increase or decrease to the mortgage contract interest rate in any given year that is not in the same direction as the change in the interest rate index. However, because of the rule's limitation on the allowable magnitude of interest rate changes over the full term of the mortgage, in no case can the application of previously unapplied interest rate changes result in the contract interest rate being more than or less than five percentage points removed from the initial contract interest rate. The accumulation of deferred interest rate changes could have the effect of maintaining the maximum or minimum allowable contract interest rate over a period of years, where the index changes consistently move in the same direction. Thus, in the example above the 11 percent mortgage contract rate might maintain, but not exceed a maximum level of 16 percent, or maintain but not fall below a minimum level of 6 percent, over a period of years.

V. Disclosure

The interim rule contains disclosure requirements that are designed to assure that a mortgagor fully understands the nature of his or her obligation, including the maximum potential increase in the monthly payment schedule under the mortgage contract terms, and an explanation of how the carryover of previously unapplied interest rate changes in the index could affect adjustments. Specific disclosure requirements include identifying the interest rate index and its source of publication and availability. The mortgagee also must provide a hypothetical payment schedule which demonstrates the change in monthly payments under the mortgage terms negotiated with respect to the particular

mortgage obligation, initial contract interest rate, the most recent index figure available and a "worst case" scenario of interest rates reaching the one percent cap for each of the first five years of the mortgage. Table A below illustrates a "worst case" scenario for a $50,000 ARM loan indexed to 1-year Treasury bills assumed to yield 10 percent, to which the lender adds a one percent margin. Table A uses an initial contract interest rate of 11 percent. Table B uses the same initial contract interest rate figure (11 percent) for the $50,000 loan, and demonstrates how the application of previously unapplied and carried over interest rate changes could affect adjustments and monthly payments (over a five year period). This example demonstrates how a mortgage contract interest rate can change: (1) In the opposite direction from an adjustment; or (2) where no change occurs in the index value.

The following table illustrates a "worst case" scenario for a $50,000 ARM written at an initial contract rate of 11.0 percent. The index rises by a percentage point in the first year and each of the second through the fifth years. In year six and beyond, the index is presumed to remain at the initial contract rate plus 5.0 percentage points. FHA insurance premium payments are not included in the monthly payments or end of year balances.

TABLE A.—"WORST CASE" SCENARIO

Policy year	Contract interest rate	Monthly payment	End of year balance
1	11	$476.17	$49,794.55
2	12	514.06	49,590.17
3	13	552.01	49,401.83
4	14	590.13	49,225.49
5	15	628.35	49,057.89
6	16	666.65	48,895.83
7	16	666.65	48,705.83
8	16	666.65	48,483.10
9	16	666.65	48,221.99
10	16	666.65	47,915.89
11	16	666.65	47,557.07
13	16	666.65	46,643.34
14	16	666.65	46,065.30
15	16	666.65	45,387.68
16	16	666.65	44,593.34
17	16	666.65	43,662.15
18	16	666.65	42,570.55
19	16	666.65	41,290.91
20	16	666.65	39,790.83
21	16	666.65	38,032.31
22	16	666.65	35,970.84
23	16	666.65	33,554.22
24	16	666.65	30,721.32
25	16	666.65	27,400.39
26	16	666.65	23,507.36
27	16	666.65	18,943.67
28	16	666.65	13,593.79
29	16	666.65	7,322.28
30	16	666.65	.00

The following ARM has the same mortgage characteristics shown in Table A. This table is presented to show the effect of carryover of excess change in the index value from year to year.

TABLE B.—EFFECT OF "CARRYOVER"

Policy year	Contract interest rate	Monthly payment	End of year balance	Year end change in index value
1	11	$476.17	$49,794.55	+2
2	12	514.06	49,590.17	0
3	13	552.01	49,401.83	+.5
4	13.5	571.00	49,207.33	−3
5	12.5	533.62	48,939.85	+1.5
6	12	515.45	48,609.46	

A review of Table B shows that a two percent increase in the index value results in the initial contract interest rate's being increased to 12 percent (applicable to second year payments) because of the one percent cap on annual adjustments. However, the contract interest rate rose to 13 percent in the third year notwithstanding the fact that the index value did not change. This is because of the carryover of the previously unapplied one percent change after the first year. The next index change, an increase of one-half of one percent, results in a contract rate increase of the same magnitude. However, a three percent decrease in the index, in the year following, results in the contract rate's decreasing by the maximum allowable one percent to 12.5 percent. In the next year, however, the previously unused 2 percent decrease is applied to offset an index increase of 1.5 percent, resulting in a contract rate decrease to 12 percent.

VI. Other Issues

With respect to each of the single-family housing programs included in the Department's ARM insurance program, the interim rule does not effect changes in current regulations related to loan-to-value, mortgage insurance premiums, or mortgagor (income) qualifications. Such actions appear to be unnecessary in view of the regulatory limitations imposed upon permissible rates of change in interest rates for an insured ARM. Comment is invited, however, concerning whether these matters need to be specifically addressed, and amended regulations prescribed, for any or all of the housing programs eligible for ARM insurance.

Single-family mortgage insurance loans defined under section 203(b) and 234(c) of the National Housing Act are among those eligible for processing under the Department's direct endorsement rule, 24 CFR 200.163 (mortgage loans under section 203(k) of the Act are not eligible). The paragraph of the regulation at 24 CFR 200.163(c) entitled "underwriter certification" has been modified by this interim rule to include provision for adjustable rate mortgage loans.

The Department is publishing this ARM rule simultaneously with an interim rule promulgated by the Government National Mortgage Association (GNMA) to amend 24 CFR Part 390. Various amendments to Part 390 are being made for the purpose of recognizing new types of mortgages for purposes of the GNMA securitization program.

Finally, the Department recently issued a notice of proposed rulemaking for the insuring of "indexed mortgages" (published in the **Federal Register** of June 4, 1984). Under that proposal, final rules, once effective, would appear at 24 CFR 203.48 (for single-family dwelling insured under section 203(b) of the National Housing Act), and 234.78 (for condominium units insured under section 234(c) of the Acts). For this reason, the regulations governing the insuring of ARMs for dwellings insured under sections 203 and 234 of the Act will be designated 24 CFR 203.49 and 234.79.

The Secretary has determined that it is urgent that the benefits afforded by this regulation be made available as soon as possible. Publishing a notice of proposed rulemaking and giving the public an opportunity to comment before the effective date of this regulation would cause a substantial delay in making the benefit available. A delay would cause unnecessary hardships to homebuyers and mortgagees who would benefit from the Department's insuring of a mortgage instrument that should increase homeownership affordability and encourage continued investment in housing. Accordingly, the Secretary finds that notice and prior public comment on the regulation would be contrary to the public interest.

VII. Findings

In accordance with 24 CFR 50.20(1), this rulemaking is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of this rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely expands the types of mortgages eligible for HUD mortgage insurance to include adjustable rate mortgages. It will impose no involuntary economic benefits or burdens.

This interim rule was listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15922) under the Executive Order 12291 and the Regulatory Flexibility Act.

The adjustable rate mortgage insurance program is not listed in the Catalog of Federal Domestic Assistance.

The collection of information requirement contained in this rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments regarding the collection of information requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20403, Attention: Desk Officer for HUD.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards.

24 CFR Part 203

Home improvement loans, Loan program—housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgages insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs—housing and community development.

Accordingly, the Department amends 24 CFR Parts 200, 203, 220, 221, 234, and 235 as follows:

PART 200—INTRODUCTION

1. Section 200.163, is amended by redesignating paragraphs (c)(7) through (c)(24) as paragraphs (c)(8) through (c)(25), and by inserting a new paragraph (c)(7) to read as follows:

§ 200.163 Direct endorsement.

* * * * *

(c) * * *

(7) That the adjustable rate mortgage meets the requirements of the Secretary as established under 24 CFR 203.49 or 234.79.

* * * * *

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

(2) In § 203.43c, paragraphs (a) is revised to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

* * * * *

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.18b, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43b, 203.44, 203.49, and 203.50 of this part shall not apply to mortgages insured under section 203(n) of the National Housing Act.

* * * * *

3. By revising § 203.45(g) to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * * *

(g) This section shall not apply to a mortgage that meets the requirements of §§ 203.18 (c), (d), (e) or (f), 203.43, 203.43a, 203.43b, or 203.49.

4. By revising § 203.46(i) to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

* * * * *

(i) This section shall not apply to a mortgage that meets the requirements of §§ 203.18 (c), (d), (e) or (f), 203.43, 203.43a, 203.43b, 203.47, 203.49, or 203.50.

* * * * *

5. By revising § 203.47(g) to read as follows:

§ 203.47 Eligibility of growing equity mortgages.

* * * * *

(g) This section shall not apply to a mortgage which meets the requirements of §§ 203.43, 203.43a, 203.43b, or 203.49.

* * * * *

6. By adding a new § 203.49 to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

A mortgage containing the provisions for periodic adjustments by the mortgagee in the effective rate of interest charged shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section. This section shall apply only to mortgage loans described under sections 203(b) and 203(k) of the National Housing act.

(a) *Interest-rate index:* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year. The weekly average yields are published in the *Federal Reserve Bulletin* and made available by the United States Treasury Department in Statistical Release H. 15 (519). Except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

(b) *Amortization provisions:* The mortgage must contain amortization provisions satisfactory to the Secretary, allowing for periodic adjustments in the rate of interest charged corresponding to changes in the interest rate index.

(c) *Frequency of interest rate changes:* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the mortgagor's first debt service payment. To set the new interest rate, the mortgagee will determine the change between the initial (i.e., base) index figure and the current index figure, or will add a specified margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(d) *Method of rate changes:* Interest rate changes may only be implemented through adjustments to the mortgagor's monthly payments.

(e) *Magnitude of changes:* The adjustable rate mortgage initial contract interest rate shall be agreed upon by the

mortgagee and the mortgagor. Subsequent adjustments to this interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(1) No single adjustment to the interest rate can result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point must be carried over for inclusion in adjustments in a subsequent year: (i) If no change occurs in the index value; (ii) to supplement an index value change in the same direction that is less than one percent; or (iii) to offset, in whole or in part, any index value change in the opposite direction. If it is not possible to apply all or a part of a deferred interest rate change at the next scheduled adjustment date, the deferred interest rate change must be carried over to the next adjustment date, or dates, that make possible its application. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(2) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, except that the mortgage may provide for minimum interest rate change limitations and for minimum increments of interest rate changes.

(f) *Pre-loan disclosure:* The mortgagee shall explain fully and in writing to the mortgagor, no later than on the date upon which the mortgagee provides the (prospective) mortgagor with a loan application, the nature of the obligation taken. The mortgagor shall certify that he or she fully understands the obligation. Such mortgagee disclosure must include the following items:

(1) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index, including the impact of a carryover adjustment that results from an index value change that exceeds one percentage point in a given year;

(2) Identification of the interest rate index, its source of publication and availability;

(3) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment;

(4) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(g) *Annual disclosure:* At least 30 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the mortgagor of the following:

(1) The new mortgage interest rate and amount of the monthly payment;

(2) The current index interest rate value, and how the payment adjustment was calculated;

(3) If applicable, the manner of application of an index interest rate change that has been carried over from a previous year because it exceeded the one percentage point ceiling on annual adjustments.

(h) *Cross-reference:* Sections 203.21 (level payment amortization provisions) and 203.44 (open-end advances) shall not apply to this section. This section shall not apply to a mortgage that meets the requirements of §§ 203.18(c) (non-occupant owners), 203.18(d) (outlying area properties), 203.18(e) (disaster victims), 203.43 (miscellaneous type mortgages), 203.43a (mortgages covering housing intended for seasonal occupancy), 203.43c (mortgages involving a dwelling unit in a cooperative housing development), 203.43d (mortgages in certain communities), 203.43e (mortgages covering houses in federally impacted areas), 203.45 (graduated payment mortgages), 203.46 (modified graduated payment mortgages) and 203.47 (growing equity mortgages).

(i) *Aggregate amount of mortgages insured:* The aggregate amount of mortgages for single-family dwellings insured under section 245(c) (indexed mortgages), § 251 (adjustable rate mortgages) and § 252 (shared appreciation mortgages) of the National Housing Act, in any fiscal year shall not exceed 10 percent of the aggregate number of mortgages that the Secretary may insure under Title II of the National Housing Act, 12 U.S.C. 1707–1715z–18.

(j) *Insurance authority:* Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 251 of the National Housing Act.

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

§ 220.1 [Amended]

7. In § 220.1, by inserting in the cross-reference table, immediately before "203.50 Eligibility of rehabilitation loans" the following:

203.49 Eligibility of adjustable rate mortgages.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

§ 221.1 [Amended]

8. In § 221.1, by inserting in the cross-reference table, immediately before "203.50 Eligibility of rehabilitation loans" the following:

203.49 Eligibility of adjustable rate mortgages.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

9. By revising § 234.75(g) to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

* * * * *

(g) This section shall not apply to a mortgage that meets the requirements of § 234.27(d), or 234.79.

* * * * *

10. By revising § 234.76(i) to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

* * * * *

(i) This section shall not apply to a mortgage that meets the requirements of §§ 234.27(d), 234.68, 234.77, and 234.79.

* * * * *

11. By revising § 234.77(g) to read as follows:

§ 234.77 Eligibility of growing equity mortgages.

* * * * *

(g) This section shall not apply to mortgage that meets the requirements of § 234.68, or 234.79.

* * * * *

12. By adding a new § 234.79 to read as follows:

§ 234.79 Eligibility of adjustable rate mortgages.

A mortgage containing provisions for periodic adjustments by the mortgagee in the effective rate of interest charged shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(a) *Interest-rate index:* Changes in the interest rate charged on an adjustable rate mortgage loan must correspond to changes in the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year. The weekly average yields are published in the *Federal Reserve Bulletin* and made available by the United States Treasury Department in Statistical Release H. 15 (519). Except as otherwise provided in this section, each change in the mortgage interest rate

must correspond to the upward or downward change in the index.

(b) *Amortization provisions.* The mortgage must contain amortization provisions satisfactory to the Secretary, allowing for periodic adjustments in the rate of interest charged corresponding to changes in the interest rate index.

(c) *Frequency of interest rate changes:* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months or later than 18 months from the date of the mortgagor's first debt service payment. To set the new interest rate, the mortgagee will determine the change between the initial (i.e., base) index figure and the current index figure, or will add a specified margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(d) *Method of rate changes:* Interest rate changes may only be implemented through adjustments to the mortgagor's monthly payments.

(e) *Magnitude of changes:* The adjustable rate mortgage initial contract interest rate shall be agreed upon by the mortgagee and the mortgagor. Subsequent adjustments to this interest rate shall correspond to annual changes in the interest rate index subject to the following conditions and limitations:

(1) No single adjustment to the interest rate can result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point must be carried over for inclusion in adjustments in a subsequent year: (i) If no change occurs in the index value; or (ii) to supplement an index value change in the same direction that is less than one percent; or (iii) to offset, in whole or in part, any index value change in the opposite direction. If it is not possible to apply all of or a part of a deferred interest rate change at the next scheduled adjustment date, the deferred interest rate change must be carried over to the next adjustment date, or dates, that make possible its application. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate over the term of the mortgage.

(2) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the mortgage interest rate, except that the adjustable rate mortgage may provide for minimum interest rate change limitations and minimum increments of interest rate changes.

(f) *Pre-loan disclosure:* The mortgagee shall explain fully and in writing to the mortgagor, no later than on the date upon which the mortgagee provides the (prospective) mortgagor with a loan application, the nature of the obligation taken. The mortgagor shall certify that he or she fully understands the obligation. Such mortgagee disclosure must include the following items:

(1) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index, including the impact of a carryover adjustment that results from an index value change that exceeds one percentage point in a given year;

(2) Identification of the interest rate index, its source of publication and availability;

(3) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment;

(4) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(g) *Annual disclosure:* At least 30 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the mortgagor of the following:

(1) The new mortgage interest rate and amount of the monthly payment;

(2) The current index interest rate value and how the payment adjustment was calculated;

(3) If applicable, the manner of application of an index interest rate change that has been carried over from a previous year because it exceeded the one percentage point ceiling on annual adjustments.

(h) *Cross-reference:* Sections 234.36 (level payment amortization provisions) and 234.70 (open end advances) shall not apply to this section. This section shall not apply to a mortgage which meets the requirements of §§ 234.27(d) (nonoccupant mortgagors), 234.68 (mortgages covering housing in certain neighborhoods), 234.69 (mortgages covering houses in federally impacted areas), 234.69a (mortgages for individually owned condominium units for existing multifamily housing demonstration), 234.75 (graduated payment mortgages), 234.76 (modified graduated payment mortgages), and 234.77 (growing equity mortgages).

(i) *Aggregate amount of mortgages insured:* The aggregate amount of mortgages for single family dwellings insured under section 245(c) (indexed mortgages), section 251 (adjustable rate mortgages) and section 252 (shared appreciation mortgages) of the National Housing Act in any fiscal year shall not exceed 10 percent of the aggregate number of mortgages that the Secretary may insure under Title II of the National Housing Act, 12 U.S.C. 1707–17015z–18.

(j) *Insurance authority:* Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 251 of the National Housing Act.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

§ 235.1 [Amended]

13. In § 235.1, by inserting in the cross-reference table, immediately before "203.50 Eligibility of rehabilitation loans" the following:

203.49 Eligibility of adjustable rates mortgages.

Authority: Sec. 7d, Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 251, National Housing Act (12 U.S.C. 1715z–16).

Dated: May 29, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84–15066 Filed 6–5–84; 8:45 am]

BILLING CODE 4210–27–M

Government National Mortgage Association

24 CFR Part 390

[Docket No. R–84–1161; FR–1962]

Securitization of Adjustable Payment Mortgages

AGENCY: Office of the President of the Government National Mortgage Association, HUD.

ACTION: Interim rule.

SUMMARY: The Government National Mortgage Association (GNMA) proposes to amend its regulations to provide for adjustable payment mortgage-backed securities. The amendments will allow the introduction of adjustable payment mortgage-backed securities programs intended to finance adjustable rate mortgages, which are mortgages on which the interest rate is adjusted

periodically based on a published national index. The regulatory amendments also will authorize the securitization of other types of adjustable payment mortgages, such as indexed mortgages, which may be introduced by the Federal Housing Administration (FHA) or the Veterans Administration (VA). Other, purely technical amendments are being made to the regulation to accommodate the introduction of the GNMA II Program, to consolidate the sections dealing with issuer default, and to clarify limits on issuer eligibility to issue securities.

DATES: Effective Date: July 30, 1984. Comment Due Date: Comments must be received by July 6, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Warren Lasko, Executive Vice President, Government National Mortgage Association, Room 6100, 451 Seventh Street, S.W., Washington, D.C. 20410; Telephone (202) 755–5926. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, approved November 30, 1983, authorizes HUD to insure various kinds of mortgage instruments which do not provide for fixed rate, level payments. HUD is now issuing rules for adjustable rate mortgages (ARMs) and proposing rules for indexed mortgages for certain single-family dwellings. HUD will later be proposing rules to authorize other mortgage instruments including shared appreciation mortgages and various non-level payment mortgages for multifamily properties. In order to provide a secondary market for these new instruments, GNMA is issuing an amendment to its regulation to provide for the securitization of these types of mortgages. This amendment to GNMA's regulation is being published as an interim rule for effect in order to accommodate the adjustable rate mortgage regulation being published by HUD as interim for effect. Since it is important that GNMA provide for a secondary market for all mortgages insured by FHA, GNMA plans to initiate its adjustable payment mortgage-backed securities program as soon as possible after the effective date of this regulation.

The new GNMA programs are being incorporated into GNMA's mortgage-backed securities program regulation through amendment of 24 CFR Part 390, Subpart C, which previously related only to graduated payment mortgage-backed securities. The new Subpart C covers all types of non-level payment mortgage securities programs, including new programs for adjustable rate and other types of innovative mortgages, as well as such existing GNMA programs as graduated payment mortgage-backed securities and growing equity mortgage-backed securities. Since growing equity mortgages will be included under Subpart C, the current Subpart D relating to these instruments will be eliminated and subsequent subparts relettered accordingly.

This regulation is written in general terms in order to accommodate a wide variety of mortgage types. The GNMA Mortgage-Backed Securities Guides have traditionally provided the detailed requirements for the securities and their issuance. GNMA has developed a general plan for the new securities which is discussed below. GNMA would appreciate comments on a number of issues that will be important to the writing of the Mortgage-Backed Securities Guide requirements, as well as comments on the interim regulation. Areas of particular concern are outlined below.

II. Features of the GNMA Adjustable Payment Mortgage-Backed Securities Program

It is planned that GNMA's new adjustable payment mortgage-backed securities programs will be established only under the GNMA II Program, which is chiefly characterized by a central paying and transfer agent, a later securities payment date, and a mechanism for allowing issuers to combine small loan packages into large multiple issuer pools against which securities are issued. (GNMA's existing non-level payment sub-programs for graduated payment mortgage-backed securities and for growing equity mortgage-backed securities will continue to be available, as at present, under both GNMA I and GNMA II Programs.) Further, the sub-programs will employ the modified pass-through approach to issuance of securities as described in 24 CFR 390.45. The regulation also provides that all loans within any one pool have precisely the same terms. Such terms will include the type of index to be applied, the method of adjusting mortgage terms based on the index, the general maturity range of mortgages within a pool, the frequency of mortgage payment adjustment, the date of mortgage payment adjustments, and the applicability of ceilings (or caps) on periodic adjustments. However, it is planned that loans with differing initial interest rates, so long as they are within a one percentage point range, may be included within the same pool.

It is GNMA's desire to facilitate the marketing through GNMA guaranteed securities of any type of adjustable payment mortgage which FHA may insure or which the Veterans Administration may subsequently develop. It is also recognized, however, that investors well may have a strong preference for homogeneity within each individual securities issuance and also a substantial degree of standardization among securities in order that they can be traded on a highly liquid basis. In order to accommodate these market needs, GNMA plans to introduce two adjustable payment mortgage securities sub-programs. The first program will provide for a highly standardized securities instrument, backed by adjustable rate mortgages which are all originated under essentially identical terms. It is anticipated that this program will facilitate the financing of FHA-insured one year adjustable rate mortgages as provided for in the regulation being issued by HUD. It is anticipated that additional restrictions, beyond those required by FHA, will be imposed by GNMA to allow for the easy securitization of these mortgages. The second program will allow the pooling of a wide range of different types of FHA-insured adjustable payment mortgages that do not meet the strict requirements of the first program. The second program is intended to accommodate the financing of a range of innovative mortgage instruments, including the proposed FHA indexed mortgage, as they may be agreed to between borrowers and lenders. All mortgages in a pool must, however, have essentially the same terms.

Under both sub-programs, investors will be provided with full disclosure of the terms of the pooled mortgages and the method by which securities payments will be adjusted.

GNMA plans to publish changes to the Mortgage-Backed Securities Guide to implement the first program as soon as possible after the effective date of this regulation in order to provide a secondary market for FHA-insured adjustable rate mortgages. Implementation of the second program will be delayed until a final regulation for the FHA-insured indexed mortgage is published for effect.

III. Issues on Which Comments are Sought

This interim rule and the Department's interim regulation for insuring adjustable rate mortgages (ARMs) are being published simultaneously. Comments are being invited in the HUD ARMs proposal on a number of issues which are also of particular importance to GNMA in the securitization of these mortgages. When final rules are published, the two rules will provide consistent treatment of these issues.

GNMA requests comment on the following specific points, some of which are also addressed in the ARMs proposal:

1. *Specific Indexes To Be Used*

In its ARM regulation FHA is limiting the index to the "weekly average yield on United States Treasury securities adjusted to a constant maturity of one year." GNMA invites comments, particularly from investors, on the desirability of allowing the use of alternative indexes.

2. *Mixing Loans With Different Rates Within the Same Pool*

Comments are invited on the advantages and disadvantages of permitting mortgages with differing initial interest rates to be included in the same pool.

3. *Rounding Adjustment Amounts*

Comments are invited with respect to rules, if appropriate, for rounding adjustments to, for instance, quarters or eighths. GNMA is interested in achieving as much liquidity as possible by standardizing the product, but does not want to require rounding to an unreasonably large fraction.

4. *Multiple Issuer Pools*

To promote liquidity in the securities and participation by small-volume issuers, GNMA is considering requiring that all adjustable payment mortgages be included in GNMA II multiple issuer pools. Comments are requested on the effects of this approach.

5. *Comments on Other Issues*

Commenters are invited of offer views and proposals relating to any other aspect of the GNMA adjustable payment mortgage securities programs that may interest them.

IV. Findings

In accordance with 24 CFR 50.20(f), this rulemaking is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of this rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely expands the types of mortgages eligible for GNMA mortgage-backed securities to include adjustable payment mortgages. It will, even when final and effective, impose no involuntary economic benefits or burdens.

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902) under Executive Order 12291 and the Regulatory Flexibility Act.

The adjustable payment mortgage-backed securities program is not listed in the Catalog of Federal Domestic Assistance.

List of Subjects in 24 CFR Part 390

Mortgages, Securities.

Accordingly, GNMA amends its regulation at 24 CFR Part 390 as follows:

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. By revising the Table of Contents to read as follows:

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

Subpart A—Pass-Through Type Securities

Sec.
390.1 General.
390.3 Eligible issuers of securities.
390.5 Securities.
390.7 Mortgages.
390.9 Pool administration.
390.11 Fidelity bond coverage.
390.13 Guaranty.
390.15 Default.
390.17 Fees.

Subpart B—Bond-Type Securities

390.21 General.
390.23 Eligible issuers.
390.25 Securities.
390.27 Mortgages.
390.29 Trust arrangements.
390.31 Guaranty.
390.33 Fees.

Subpart C—Non-Level Payment Mortgage-Backed Securities

390.41 General.
390.43 Eligible mortgages.
390.45 Securities.

Subpart D—Marketing and Trading Requirements

390.50 Definitions.
390.51 Suitability of issuer marketing and trading transactions.
390.52 Contract (mark to market) requirements.
390.53 Prudent business practices.
390.54 Failure to comply.

Subpart E—Miscellaneous Provisions

390.60 Audits and reports.
390.61 Applications.

2. By revising Subpart A (Pass-Through Type Securities) to read as follows:

Subpart A—Pass-Through Type Securities

§ 390.1 General.

The Association is authorized by section 306(g) of the National Housing Act, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities which are based on and backed by a trust or pool composed of mortgages which are insured by the Federal Housing Administration or the Farmers' Home Administration, or insured or guaranteed by the Veterans' Administration. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This subpart is limited to "pass-through" securities, including (a) "straight pass-through" and (b) "modified pass-through" types, and does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the Association's Mortgage-Backed Securities Guides and contracts entered into by the parties. Further information may be obtained from the Government National Mortgage Association, 451 Seventh Street SW., Washington, D.C. 20410.

§ 390.3 Eligible issuers of securities.

(a) A mortgage lender, including an instrumentality of a State or local government, to be eligible to issue and service mortgage-backed securities guaranteed by the Association must—

(1) Be in good standing as a mortgagee approved by the Federal Housing Administration;

(2) Be in good standing as a mortgage servicer approved by the Federal National Mortgage Association (FNMA) or the Association;

(3) Have adequate experience, management capability, and facilities to issue and service mortgage-backed securities, as determined by the Association;

(4) Maintain the applicable minimum net worth prescribed in paragraph (c) of this section; and

(5) Meet the requirements, conditions, and limitations prescribed by the Association in this section or the applicable Association's Mortgage-Backed Securities Guide (GNMA 5500.1—GNMA I Program and GNMA 5500.2—GNMA II Program).

(b) The Association shall not commit to guarantee, or guarantee (pursuant to a commitment or otherwise) any issue of mortgage-backed securities unless the mortgage lender requesting such commitment or guaranty qualifies as an eligible issuer both at the time of commitment approval and at the time of the issuance of the guaranty.

(c) Each eligible issuer shall maintain at all times a net worth in assets acceptable to GNMA of not less than the applicable minimum amount set forth in this paragraph, as follows:

(1) For the issuance of straight pass-through securities, $100,000;

(2) For the issuance of modified pass-through securities based on and backed by mortgages on one-to-four family residences—

(i) With respect to securities issued prior to October 1, 1979, an amount equal to the lesser of:

(A) $250,000; or

(B) $100,000, plus 1 percent of securities outstanding in excess of $5 million.

(ii) With respect to securities issued on or after October 1, 1979, an amount equal to the sum of:

(A) $100,000; plus

(B) 1 percent of securities outstanding in excess of $5 million but not in excess of $20 million; plus

(C) 0.2 percent of securities outstandiing in excess of $20 million;

(3) For the issuance of modified pass-through securities based on and backed by mortgages on manufactured homes—

(i) With respect to securities issued prior to October 1, 1979, $500,000.

(ii) With respect to securities issued on or after October 1, 1979, an amount equal to the sum of:

(A) $500,000; plus

(B) 0.2 percent of securities outstanding in excess of $35 million;

(4) For the issuance of modified pass-through securities based on and backed by mortgages on multifamily projects (both construction and permanent mortgages)—

(i) With respect to securities for which the first issue within any pool or project was issued prior to October 1, 1979, an amount equal to the lesser of:

(A) $500,000; or

(B) The sum of 3 percent of the first $5 million of securities outstanding, plus 2 percent of the next $5 million of securities outstanding, plus 1 percent of securities outstanding in excess of $10 million, but in no event shall such net worth be less than $100,000.

(ii) With respect to securities for which the first issue within any pool or project was issued on or after October 1, 1979, an amount equal to the sum of:

(A) $500,000; plus

(B) 0.2 percent of securities outstanding in excess of $35 million;

(5) For the issuance of more than one type of security on or after October 1, 1979, an amount equal to the sum of:

(i) $500,000; plus

(ii) 0.2 percent of all mortgage-backed securities outstanding in excess of $35 million.

(d)(1) In computing the required amount of net worth for purposes of this section, the term "securities outstanding" means the sum of:

(i) The unpaid principal balances of securities currently in the name of the issuer; plus

(ii) The amount of any outstanding commitments for guaranty issued by the Association, excluding the amount of project security commitments outstanding for the same project; plus

(iii) The amount of any commitments to guarantee currently being requested from the Association, excluding the amount of project security commitments requested in cases where construction security commitments are being requested for the same project.

(2) In calculating required net worth, any securities outstanding that are based on internal reserve pools will be reduced by one-half in the making of such calculations.

(e) A mortgage lender shall not qualify as an eligible issuer at any time in which—

(1) The lending policies of the issuer permit any discrimination based on race, religion, color, national origin, age, or sex of a borrower; or

(2) The issuer is not in compliance with any rules, regulations, or orders issued under Title VI of the Civil Rights Act of 1964; Executive Order 11063, Equal Opportunity in Housing, November 20, 1962; Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967; or Title VII of the Civil Rights Act of 1968; or by the FHA or VA.

(f) A mortgage lender shall qaualify as an eligible issuer only so long as it conducts its business operations in accordance with accepted mortgage banking practices, ethics, and standards, as determined by the Association, and shall maintain its books and records in accordance with generally accepted accounting principles.

(g) In the event that a mortgage lender which has qualified as an eligible issuer should subsequently fail to comply with any of the requirements prescribed in this section, the Association may withhold further commitments to guarantee securities until such time as the Association is satisfied that the mortgage lender has resumed business operations in compliance with such requirements.

§ 390.5 Securities.

(a) Instruments. Securities to be issued pursuant to the provisions of this subpart may be of one of the following types, but only one of such types may be issued against any single pool of mortgages: (1) Straight pass-through securities, which provide for the payment by the issuer to the holders of a proportionate share of the proceeds of principal and interest, as collected, on account of a pool of mortgages, less servicing fees and other specified costs approved by the Association; and (2) modified pass-through securities, which provide for such payment, whether or not collected, of both specified principal installments and a fixed rate of interest on the unpaid principal balance, with all prepayments being passed through to the holder. In the case of delinquent mortgages in a pool backing modified pass-through securities, the issuer is required to make advances if necessary to maintain the specified schedule of interest and principal payments to the holders, or at its option, at any time 90 days or more after default of any such mortgage, the issuer may repurchase such mortgage for an amount equal to the unpaid principal balance of the mortgage. Both straight pass-through and modified pass-through securities must specify the dates by which payments are to be made to the holders thereof, and must indicate the accounting period for collections on the pool's mortgages relating to each such payment, and the securities must also specify a date on which the entire principal to be collected will have been paid or will be payable.

(b) Issue amount. Each issue of guaranteed securities must be in a minimum face amount of $250,000. The total face amount of any issue of securities cannot exceed the aggregate unpaid principal balances of the mortgages in the pool. The association may provide for issuers to submit packages of mortages that may be consolidated, with other packages of similar types of mortgages, into multiple issuer pools.

(c) Face amount of securities. The face amount of any security cannot be less thant $25,000.

(d) Transferability. Securities are transferable, but the share of the proceeds collected on account of the pool of mortgages is payable only to the registered holder of a security according to the rules established by the Association.

§ 390.7 Mortgages.

Each issue of guaranteed securities must be backed by a separate pool of mortgages which:

(a) Are insured under the National Housing Act or title V of the Housing Act of 1949, or insured or guaranteed under chapter 37 of title 38, United States Code;

(b) Have a date for the first scheduled monthly payment of principal and interest, or date of purchase from an Association-approved auction, that is no more than 12 months prior to the date on which the Association commits to guarantee the issue of securities;

(c) Will be replaced by the issuer if found defective by the Association at any time prior to 4 months after the date on which the Association issues its guaranty of the securities; and

(d) Meet such other standards of acceptability as may be prescribed by the Association.

For purposes of this Part, a mortgage on a manufactured home means either a loan for the purchase of a manufactured home unit or a comnbination loan for the purchase of a manufactured home and a developed manufactured home lot in a single transaction.

§ 390.9 Pool administration.

The Association will not guarantee securities if the pool arrangement proposed by the issuer does not satisfactorily provide for:

(a) Servicing of the mortgages in the pool;

(b) Segregation of the cash flow from mortgages in the pool from the other assets of the issuer;

(c) Timely payment of principal and interest, in accordance with the terms of the guaranteed securities;

(d) Notification to the Association of an impending default, on the part of the issuer, in adequate time for the Association to make timely payments on the securities; and

(e) Delivery to a designated custodial agent satisfactory to the Association of the mortgage notes or other evidences of indebtedness secured by the mortgages in the pool and protection of the Association's interest in all assets in the pool as collateral for its guaranty.

§ 390.11 Fidelity bond coverage.

The issuer shall maintain, for the benefit of the Association, fidelity bond coverage, acceptable to the Association, that assures the faithful performance of the fiduciary responsibilities of the issuer.

§ 390.13 Guaranty.

With respect to straight pass-through securities, the Association guarantees the timely payment to the security holder of the proceeds of principal and interest, as collected, as undertaken in the Association's guaranty appearing on the face of the security. With respect to modified pass-through securities, the Association guarantees the timely payment whether or not collected, of the fixed rate of interest on the outstanding balance and the specified principal installments, as undertaken in the Association's guaranty appearing on the face of the security. The Association's guaranty is backed by the full faith and credit of the United States.

§ 390.15 Default.

(a) As to straight pass-through securities, any failure or inability of the issuer to make payment as due to the holders of the securities from the proceeds from the pool of mortgages which have been collected, or any failure to make collections under reasonable and accepted standards of mortgage servicing, shall constitute a default of the issuer. As to modified pass-through securities, any failure or inability of the issuer to make fixed or other payments as due as well as such other failures as may be identified by the Association and included in the applicable contractual agreement, shall be deemed such a default.

(b) Upon any default by the issuer and payment under its guaranty by the Association, or any failure of the issuer to comply with the terms of the applicable contractual agreement, the Association may institute a claim against the issuer's fidelity bond, or may, pursuant to Section 306(g) of the National Housing Act, extinguish all the right, title, or other interest of the issuer in the pooled mortgages, by letter directed to the issuer stating the facts incident to such failure and making the mortgages the absolute property of the Association, subject only to unsatisfied rights therein of the holders of the securities, or the Association may do both. However, when an issuer has failed to comply with the Association's requirements for pool administration or other requirements unrelated to payment to securities holders, net worth or business status, the Association also may bring proceedings to default such issuer. The proceedings will include serving the issuer, by hand delivery or by certified or registered mail, with a written notice stating the facts incident to such failure and setting forth such affirmative requirements as the Association may consider necessary to correct such failure to be in compliance. Steps to correct or otherwise remedy such failure shall be carried out in accordance with such procedures as may be set forth in the applicable contractual agreement.

§ 390.17 Fees.

The Association may impose application fees, guaranty fees, securities transfer fees, and such other fees as are reasonable in relation to costs, expenses, and risks.

3. By removing Subparts C (Graduated Payment Mortgage-Backed Securities) and D (Growing Equity Mortgage-Backed Securities), and by adding a new Subpart C, to read as follows:

Subpart C—Non-Level Payment Mortgage-Backed Securities

§ 390.41 General.

This Subpart provides for the guaranty by the Association of timely payment of principal and interest on modified pass-through securities based on and backed by eligible non-level payment mortgages, which mortgages provide for non-level monthly installments. The Association is authorized by section 306(g) of the National Housing Act to make such guarantees. Issuance of securities under this Subpart is subject to the provisions that follow, to the further provisions contained in the applicable Mortgage-Backed Securities Guide (GNMA 5500.1 or GNMA 5500.2), as it shall exist and be amended or supplemented from time to time, and to the contracts entered into by the participating parties. Requirements for Eligible Issuers, Pool Administration, Guaranty, Default and Fees shall be the same as specified in Subpart A for modified pass-through securities.

§ 390.43 Eligible Mortgages.

Each issue of guaranteed securities shall be based on and backed by a pool of a single type of mortgage characterized by non-level monthly payments. The mortgages must:

(a) Provide for changes in monthly installments for reasons including but not limited to: (1) Changes in the interest rate; (2) deferred payments of principal or interest; (3) accelerated repayment of principal; or (4) changes in the remaining principal balance;

(b) Be insured under the National Housing Act or guaranteed under Chapter 37 of Title 38, United States Code; and

(c) Have a date for the first scheduled monthly payment of principal (which may be negative) and interest, or date of purchase from an Association-approved auction, that is no more than 12 months prior to the date on which the Association commits to guarantee the issue of securities.

§ 390.45 Securities.

(a) Instruments. Non-level payment mortgage backed securities shall be identified according to the characteristics of the amortization schedules of the underlying mortgages and shall include, but not be limited to: Graduated Payment Mortgage Backed Securities; Growing Equity Mortgage Backed Securities; and Adjustable Payment Mortgage Backed Securities, which in turn shall include but not be limited to securities based on and backed by adjustable rate mortgages, and indexed mortgages. The securities shall be issued in the form of modified pass-through type securities, which shall provide that each monthly installment payable to the holders shall consist of: (1) The interest due monthly on the securities computed as one-twelfth (1/12) of the applicable annual rate multiplied by the unpaid principal balance of the securities at the end of the prior month. (The amount of interest actually paid may be less than the amount accrued to the extent scheduled principal payments are negative.), and (2) the scheduled recoveries of principal (which may be negative) due monthly on the pooled mortgages and apportioned to the holders by reason of the base and backing of these securities, such amounts of principal and interest to be remitted to the holders whether or not funds sufficient to pay an installment are collected by the issuer, together with (3) any apportioned prepayments or other unscheduled recoveries of principal on the pooled mortgages. Unscheduled recoveries of principal shall include amounts which an issuer must pay from its own funds to provide the holders with any principal that remains unrecovered after receipt of a final insurance claim settlement or other liquidation proceeds. At any time 90 days or more after default of any pooled mortgage the issuer may, at its option, repurchase such mortgage from the pool for an amount equal to the unpaid principal balance of the mortgage. The securities shall specify the maturity dates and dates upon which payments are to be made to the holders.

(b) Issue Amount. Each issue of securities shall be in an amount no less than $250,000. The total face amount of any issue of securities shall not exceed the aggregate scheduled unpaid principal balances of the mortgages in the pool as of the issue date of the securities. The Association may provide for issuers to submit packages of mortgages that may be consolidated, with other packages of similar types of mortgages, into multiple issuer pools. Further, the Association and issuers reserve the right to consolidate pools of mortgages backing the securities with other pools backed by similar mortgages bearing the same interest rate and maturity dates in accordance with such procedures as may be established in the applicable Mortgage Backed Securities Guide.

(c) Face Amount. The original face amount of any security shall not be less than $25,000.

(d) Transferability. The securities are freely transferable and assignable, but only on the books and records of the Association or of the issuer.

4. By redesignating Subparts E and F as Subparts D (Marketing and Trading Requirements) and E (Miscellaneous Provisions), respectively.

Authority: Secs. 306(g) and 309(a) of the National Housing Act, 12 U.S.C. 1721(g) and 1723a(a); sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 29, 1984.

Robert W. Karpe,

President, Government National Mortgage Association.

[FR Doc. 84-15065 Filed 6-5-84; 8:45 am]

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federal register

Wednesday
June 6, 1984

Part VIII

Department of Education

34 CFR Part 241

Law-Related Education Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 241

Law-Related Education Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to provide Federal financial assistance to support law-related education programs that educate people about the legal system and the principles on which it is based. The regulations authorize the establishment of priorities for particular types of projects and establish criteria for the evaluation of grant applications.

DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. This effective date does not apply to §241.30, which contains information collection requirements not approved by OMB in accordance with the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Rita Ray, Program Officer, Law-Related Education Program, Division of Educational Support, Office of Elementary and Secondary Education, U.S. Department of Education, Room 2025, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 472–7960.

SUPPLEMENTARY INFORMATION: In fiscal Years 1980, 1981, and 1982, the statutory authority for the Law-Related Education Program was the Law-Related Education Act of 1978, enacted as Part G of Title III of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95–561, 91 Stat. 2216 (20 U.S.C. 3001–3003). Effective September 30, 1982, the Education Consolidation and Improvement Act of 1981 (ECIA) repealed the Law-Related Education Act of 1978.

The Congressional Conference Committee on the second continuing resolution for Fiscal Year (FY) 1983 (Pub. L. 97–377) directed that $1 million be reserved from the Secretary's Discretionary Program to fund law-related education projects. As a result, FY 1983 awards were made under the authority of Section 583 of ECIA, which authorizes the Secretary's Discretionary Program. For FY 1984, the Congressional Conference Report on Public Law 98–139 directs the Secretary to use $1 million for law-related education projects previously authorized by Title III–G of the Elementary and Secondary Education Act.

The purpose of law-related education is to enable non-lawyers, including children, youth, and adults, to be more informed citizens concerning the law, the legal process, the legal system, and the fundamental principles upon which these are based.

These regulations provide for the Secretary annually to give priority to one or more of several types of projects described in § 241.10 and to establish limits or requirements for the scope of the service areas under these projects. In FY 1984, the Secretary will focus on projects that support the institutionalization of existing model law-related education programs in elementary and secondary school classrooms.

No substantive comments were received during the 45 day public comment period on the Notice of Proposed Rulemaking (NPRM) published on January 19, 1984 in 49 FR 2458. Except for minor technical corrections, these final regulations have not been changed from the NPRM.

Overview of These Regulations

These regulations relate to—

- General matters such as the description of this program, eligibility of a grantee, and regulations and definitions that apply to this progam;
- The types of projects that will be funded; and
- How a grant is made to a successful applicant, including the selection criteria for reviewing an application.

Applicability of Other Statutes and Regulations

(1) A local educational agency that receives a grant under this program must provide for the equitable participation of private school children in the project, in accordance with section 586 of ECIA. (20 U.S.C. 3862.)

(2) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79 are applicable to this program.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on States and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Paperwork Reduction Requirements

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the information collecton requirements that are included in these regulations will be submitted for approval to the Office of Management and Budget (OMB). These requirements (§ 241.30) do not take effect until OMB approval has been obtained and the public has been notified through a notice published in the **Federal Register**.

List of Subjects in 34 CFR Part 241

Education, Educational study programs, Elementary and secondary education, Grant programs—education, Law.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.123, Law-Related Education Program)

Dated: May 31, 1984.

T. H. Bell,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations to add a new Part 241 as follows:

PART 241—LAW-RELATED EDUCATION PROGRAM

Subpart A—General

Sec.

241.1 What is the Law-Related Education Program?
241.2 Who is eligible to apply for a grant under the Law-Related Education Program?
241.3 What regulations apply to the Law-Related Education Program?
241.4 What definitions apply to the Law-Related Education Program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

241.10 What types of projects does the Secretary assist?
241.11 What priorities may the Secretary select?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

241.30 How does the Secretary evaluate an application?
241.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must be Met by a Grantee?

241.40 What provisions must be made for participation of private school children?

Authority: Section 583 of the Education Consolidation and Improvement Act of 1981 (Pub. L. 97-35) (20 U.S.C. 3851), unless otherwise noted.

Subpart A—General

§241.1 What is the Law-Related Education Program?

The Law-Related Education Program is designed to provide persons with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based. The purpose of the program is to enable children, youth, and adults to become more informed citizens.

(20 U.S.C. 3851)

§241.2 Who is eligible to apply for a grant under the Law-Related Education Program?

(a) A State educational agency (SEA), local educational agency (LEA), or other public or nonprofit private agency, organization, or institution may apply for a grant.

(b) An applicant may apply singly or jointly with other eligibility applicants, as provided in 34 CFR 75.127 through 75.129.

(20 U.S.C. 3851)

§241.3 What regulations apply to the Law-Related Education Program?

The following regulations apply to the Law-Related Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

(b) The regulations in this Part 241.

(20 U.S.C. 3474)

§241.4 What definitions apply to the Law-Related Education Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
EDGAR
Elementary school
Local educational agency
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
State educational agency

(b) *Definition that applies to this program.* The following definition applies to the Law-Related Education Program:

"Institutionalization" means the incorporation of law-related education materials and processes—and their adaptation, as appropriate—as an integral part of ongoing system-wide activities using State and local funding sources.

(20 U.S.C. 3473(a), 3851)

Subpart B—What Types of Projects Does the Secretary Assist Under THis Program?

§241.10 What types of projects does the Secretary assist?

The Secretary may fund applications proposing projects that include, but are not limited to, those designed to—

(a) Support the institutionalization of existing model law-related education programs in elementary and secondary school classrooms;

(b) Provide assistance from established law-related education programs to other State and local educational agencies to enable them to institutionalize successful law-related education programs;

(c) Support projects to develop, test, demonstrate, and disseminate new approaches or techniques in law-related education that can be used or adapted and eventually institutionalized by other agencies and institutions; or

(d) Support one or more contracts for specific activities in law-related education outside of the grant competition under these regulations.

(20 U.S.C. 3851)

§ 241.11 What priorities may the Secretary select?

(a) Each year, the Secretary may select for priority one or more of the types of projects listed in § 241.10.

(b) The Secretary may establish limits or requirements for the scope of the service area under one or more of the types of projects under § 241.10, such as State-wide, regional, or national projects.

(c) The Secretary publishes the selected priorities, and limits or requirements for the scope of service areas, if any, in a notice in the **Federal Register.**

(20 U.S.C. 3474(a), 3851)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 241.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 241.31 of these regulations.

(b) The Secretary awards up to 100 points for the extent to which an application meets these criteria.

(c) The maximum possible points for each complete criterion is indicated in parentheses after the heading for each criterion.

(20 U.S.C. 3474(a), 3851)

§ 241.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Institutionalizing law-related education.* (35 points)

The likely success of the project in helping to institutionalize law-related education programs as measured by the extent and quality of activities that contribute to—

(1) An increase in the number of educators and others who are competent in law-related education; and

(2) The development of partnerships among State educational agencies, local educational agencies, and other public and private agencies for the implementation of law-related education programs in the classroom.

(b) *Plan of operation.* (15 points)

(1) The quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the programs;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel. (15 points)*

(1) The quality of the key personnel the applicant plans to use in the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in the fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Quality of project.* (15 points)

The likely quality of the project as measured by the following:

(1) Evidence of applicability to classroom use and age-level of students of the applicant's materials, programs, or approaches in law-related education.

(2) The applicant's and the staff's experience in and knowledge of law-related education.

(3) How the project addresses a diversity of learning approaches that are—

(i) Appropriate to the students to whom the project is directed;

(ii) Designed to address gains not only in students' knowledge, but also in their skills; and

(iii) Balanced and based on sound scholarship and do not advocate particular legal or political viewpoints.

(4) The involvement of the appropriate State educational agency or agencies in the planning and conduct of the project.

(e) *Budget and cost effectiveness.* (8 points)

(1) The extent to which the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (7 points)

(1) The quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The extent to which the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3474, 3851)

Subpart E—What Conditions Must be Met by a Grantee?

§ 241.40 What provisions must be made for participation of private school children?

An LEA that receives a grant under this programs must provide for the equitable participation of private school children in the project, in accordance with Section 586 of the Education Consolidation and Improvement Act of 1981.

(20 U.S.C. 3862)

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Wednesday, June 6, 1984

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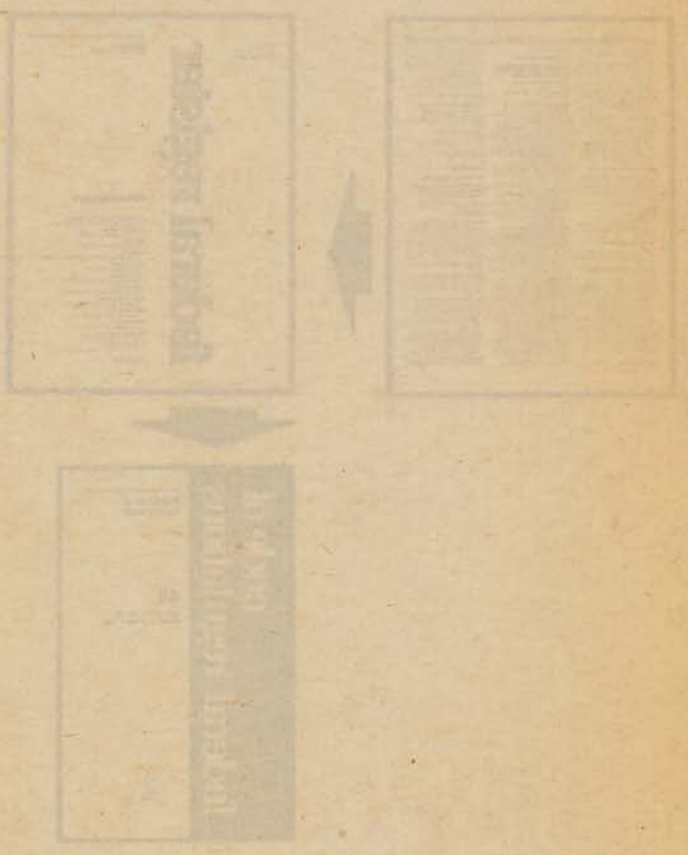
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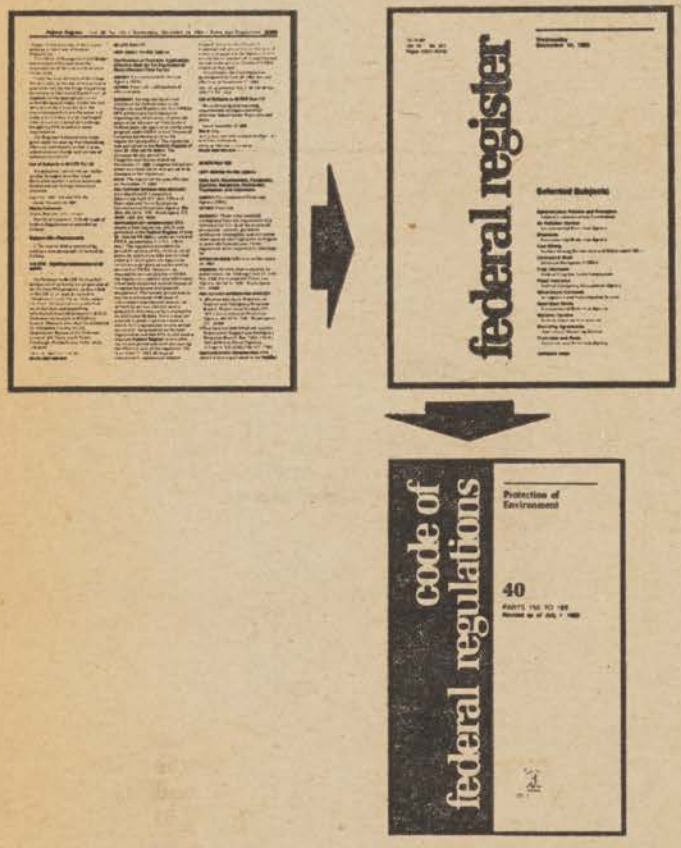
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